



The State of New Hampshire Insurance Department

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Alexander K. Feldvebel
Acting Commissioner

In the Matter of
The Individual Health Insurance Market
in New Hampshire
Docket: INS No. 20-009-AP

ORDER

A. Procedural History and Jurisdiction

Historically, the individual health insurance market has been more vulnerable than group markets to adverse selection and other destabilizing forces. As a result, since 1998, the New Hampshire Legislature has provided regulatory authority to the New Hampshire Insurance Department (“the Department”), pursuant to RSA 404-G (Individual Health Insurance Market), to protect New Hampshire citizens who participate in the individual market by supporting risk sharing mechanisms that (1) equitably distribute excessive risk associated with the individual market and (2) enable insurers “to better protect against the costs of covering high risk individuals.” RSA 404-G:1 (I). To achieve that purpose, the New Hampshire Individual Health Plan Association (“the Health Plan”) was created to facilitate the availability of affordable individual health insurance by establishing (1) an assessment mechanism and (2) a mandatory risk sharing plan to distribute the risks associated within the individual market. See RSA 404-G:1 (II). The Health Plan has implemented several risk sharing mechanisms since 1998 to achieve the purpose set forth in RSA 404-G:1, including a risk subsidy mechanism (1998); a high risk pool (2002); and a federal high risk pool (2013).

In recent years (until 2019), the Medicaid Expansion population purchased insurance in the individual market in New Hampshire. This made it impracticable for the state to pursue a market stabilization program under a 1332 waiver, as federal law does not allow for federal Medicaid funds to be contributed to such a program. This barrier was removed in 2019 when the Medicaid Expansion population was moved out of the individual market and into a Medicaid Managed Care program.

To address current needs within the individual insurance market, during the 2019 New Hampshire legislative session, House Bill 4 was signed into law, which amended RSA 404-G and RSA 420-N (Federal Healthcare Reform) with new provisions within RSA 404-G:12 (Contingency) and RSA 420-N:6-a (Waiver). RSA 404-G:12 authorizes the Insurance Commissioner, if supported by the recommendations of actuarial experts retained by the New Hampshire Insurance Department (“Department”), to request the Board of Directors of the Health

Plan to develop a Plan of Operation to support the affordability and accessibility of health insurance in New Hampshire’s individual health insurance market. Likewise, if supported by analysis of actuarial experts retained by the Department, RSA 420-N:6-a, requires the Department to submit an application to the federal government, on behalf of the state, to waive certain provisions of the Affordable Care Act (“the ACA”) in order to create a risk sharing or reinsurance mechanism for the individual health insurance market.

B. Findings of Fact

In 2017, five insurers participated in the individual health insurance market in New Hampshire. In 2020, only three insurers issue health insurance policies in New Hampshire in the individual market.

Over the past several years, the Department has retained Gorman Actuarial, an actuarial healthcare consulting firm, to provide analytic support of the Department’s annual hearings on health insurance premiums and to review and analyze medical claim cost drivers within New Hampshire. From 2017 to 2019, Gorman Actuarial reported that the number of individuals insured and receiving premium tax subsidies from the federal government within the individual health insurance market remained relatively stable with approximately 29,000 insureds in 2017 and approximately 30,000 insureds in 2019. By comparison, the number of individuals insured without premium tax subsidies has decreased sharply from approximately 25,000 insureds to approximately 16,000 insureds.

This past year, the Department retained NovaRest Actuarial Consulting, (“NovaRest”) to provide actuarial analysis and policy evaluation of New Hampshire’s individual health insurance market, including the impact a Section 1332 Waiver would have in New Hampshire’s individual insurance market if such a program were to be implemented. The federal program providing for Section 1332 State Relief and Empowerment Waivers under the ACA (“1332 waiver”)¹ allows states to apply for federal funding to support programs that reduce premium tax credit² expenditures by the federal government within the individual market. The 1332 waiver program transfers the federal savings associated with premium reductions to states, which is known as federal pass through funding.³ According to federal guidelines,⁴ in order to be approved by the federal government, states have to demonstrate that a 1332 waiver program meets four requirements, as follows:

- (1) Comprehensive Coverage – 1332(b)(1)(A) provision: The proposed waiver cannot make alterations to the required scope of benefits offered in the state and cannot result

¹ “Section 1332:State Innovation Waivers.” The Center for Consumer Information & Insurance Oversight. <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation>.

² Premium tax credits are income based and calculated against the cost of the 2nd lowest cost silver plan.

³ Premium tax savings, or pass through funding, is calculated against the cost of the 2nd lowest cost silver plan with the waiver program versus the cost of the 2nd lowest cost silver plan without the waiver program. Savings, in the first instance, are realized via a State share, a source of funds made available by the State. The pass through savings are leveraged by the State share. Other states with 1332 programs have generally leveraged between 2 and 3 federal pass through dollars for every state share dollar.

⁴ See 45 CFR 155.1308(f).

in a decrease in the number of individuals with coverage that meet the ACA's Essential Health Benefits requirements.

- (2) Affordability – 1332(b)(1)(B) provision: The proposed waiver cannot decrease existing coverage or costsharing protections against excessive out-of-pocket spending. The waiver cannot result in any decrease in affordability for individuals.
- (3) Scope of Coverage – 1332(b)(1)(C) provision: The proposed waiver must provide coverage to at least a comparable number of residents as would be provided coverage absent the waiver.
- (4) Federal Deficit Neutrality – 1332(b)(1)(D) provision: The proposed waiver cannot result in increased spending, administrative, or other expenses to the federal government.

The Department sought NovaRest's expert analysis to evaluate the potential success of a 1332 waiver program, such as the ability (1) to fund high cost claims; (2) to increase the number of individuals within the individual market; and (3) to increase the number of insurers writing policies in this market. On February 6, 2020, NovaRest issued a report entitled "Health Insurance Individual Market Study and 1332 Waiver Analysis."⁵ According to this report, in 2021 the number of individuals receiving premium tax subsidies is expected to remain relatively stable at approximately 30,000 insureds regardless of whether New Hampshire implements a risk sharing mechanism or a reinsurance plan. However, for individual insureds who do not receive premium tax subsidies from the federal government, if New Hampshire does not implement a reinsurance or risk sharing mechanism for 2021, the number of insureds in this segment of the individual health insurance market decrease by an additional 6%.

According to the NovaRest report, from 2017 to 2020 individual premium rates have increased by approximately 35%. For example, in 2017, Gorman Actuarial reported that the average individual market premium was \$406 per month while in 2020, NovaRest reported an average individual market premium of \$548 per month. NovaRest estimates that in 2021 the average individual health insurance premium, absent any risk sharing or reinsurance mechanism, will be \$573. Notably, that figure is 41% more than the 2017 rate.

In contrast, NovaRest estimates that the 2021 average premium, if a risk sharing mechanism is implemented, will be \$480. This premium amount is 18% more than the 2017 rate but much less than what the premium will be without a reinsurance mechanism. As a result, NovaRest projects that the non-subsidized membership in the 2021 individual market will increase 6% compared to the baseline if a 1332 waiver program is not implemented. In addition, for 2021, the proposed reinsurance program is estimated to cover 74% of paid claims between \$60,000 and \$400,000. According to NovaRest, a 1332 waiver program in New Hampshire would operate much like the temporary ACA Transitional Reinsurance program that was in place between 2014 and 2016. The 1332 waiver reinsurance mechanism allows enrollees to remain in the individual market with their current plan and issuer. However, a portion of their claims are

⁵ <https://www.nh.gov/insurance/reports/documents/nh-section-1332-waiver-actuarial-report-feb-2020.pdf>

reimbursed back to their issuers by the reinsurance program without negative consequences to enrollees. Enrollees are unaware that their claims are being paid via the reinsurance pool. Finally, NovaRest's actuarial analysis reflects that the implementation of a 1332 waiver program satisfies the four requirements necessary for approval by the federal government, as outlined above. Overall, given these results, NovaRest concludes that the implementation of a 1332 waiver program will promote the stability of the individual health insurance market in New Hampshire.

C. Legal Analysis and Conclusions of Law

Pursuant to RSA 404-G:12 (I), if supported by recommendations of actuarial experts, the Department may request the Board of Directors of the Health Plan ("the Board") to develop a Plan of Operation to support the affordability and accessibility of health insurance in New Hampshire's individual health insurance market. The Board's proposal may include a recommendation that the state apply for a 1332 waiver and, if approved by the Department, the Department and the Board shall proceed consistent with RSA 420-N:6-a. See RSA 404-G:12 (II). Moreover, once established by actuarial experts that a 1332 waiver program is consistent with RSA 404-G:1,⁶ RSA 420-N:6-a⁷ requires the Department to submit a 1332 waiver application to the federal government, as soon as practicable, in order to protect New Hampshire citizens participating in the individual health insurance market.

NovaRest's actuarial report demonstrates that a reinsurance mechanism would improve the affordability of insurance in the individual market and recommends that New Hampshire should apply for a 1332 waiver with the federal government. To the contrary, based upon actuarial analysis, considering the current individual market conditions, if a 1332 waiver plan is not implemented, the individual health insurance market in New Hampshire will deteriorate with higher premium rates and less participation by New Hampshire citizens.

Considering the foregoing, as soon as possible, but no later than 30 days from today's date, the Board shall develop and submit to the Department for approval a Reinsurance Risk Mechanism Plan of Operations that includes the 1332 waiver program within the individual health insurance market that provides substantially as set forth below.

⁶ RSA 404-G:1 Purpose of Provisions—The purpose of this chapter is to:
I. Protect the citizens of this state who participate in the individual health insurance market by providing a mechanism to equitably distribute the excessive risk sometimes associated with this market and to enable insurers to better protect against the costs of covering high risk individuals.

⁷ 420-N:6-a Waiver. – If such action is supported by the recommendations of actuarial experts retained by the department as being consistent with the purposes of RSA 404-G:1, I, the commissioner shall, at the earliest practicable date, submit an application on behalf of the state to the United States Secretary of the Treasury, and if required, to the United States Secretary of Health and Human Services, to waive certain provisions of the Act, as provided in section 1332 of the Act, or any other applicable waiver provision in order to create a risk sharing or reinsurance mechanism for the individual market under RSA 404-G which is eligible to draw down federal pass-through funding to support such mechanism. The commissioner shall publish and accept public comment on the 1332 waiver application and the plan of operation for the individual market mechanism prior to approving such plans. Upon approval of the joint health care reform oversight committee, the commissioner shall implement any federally approved waiver, including but not limited to overseeing the implementation of a revised plan of operations under RSA 404-G:12.

D. Reinsurance Risk Mechanism Plan of Operation

1. *Purpose & Description of Risk to be Shared*- The Board shall prepare a Plan of Operation for approval by the Commissioner, and following such approval, operate a reinsurance mechanism to offset claims incurred and paid by insurers of individual health insurance in New Hampshire using a financial subsidy furnished by Health Plan members and grant funds furnished by the federal government. Individual health insurance, as defined in RSA 404-G:2 VII. and VIII., that is eligible for this reinsurance program includes policies, contracts, or certificates (other than a converted policy) issued in New Hampshire by a licensed insurer covering a New Hampshire resident insured and dependents, to provide, deliver, arrange for, pay for or reimburse the costs of health care services consistent with ACA requirements. Individual health insurance not subject to the ACA's single risk pool requirements shall not be eligible for reinsurance. This ineligible coverage includes, but is not limited to, transitional coverage and grandfathered coverage.
2. *Assessment Amount and Mechanism* – Assessments shall commence January 1, 2021. The Health Plan will assess its members based upon assessable lives per month, also referred to as “per member per month” (PMPM) basis. For calendar year 2021, the monthly assessment rate shall be \$2.43 PMPM. This is equal to 60 basis points of the 2nd lowest cost silver plan monthly rate for a 40 year old insured in the previous year, 2020, which was \$404.60 PMPM. Thereafter, the assessment rate for any subsequent calendar year shall be set equal to 60 basis points of the 2nd lowest cost silver plan monthly rate, assuming no reinsurance mechanism, for a 40 year old insured in the prior year. Assessments shall accrue monthly and be collected quarterly.
3. *State Share*- Funds available for the State Share shall be entirely from funds raised via assessments of Health Plan members. Total assessment funds less funds needed for administration by the Health Plan shall constitute the State Share. The assessment rate and available funds will not vary with reinsurance claims. State funds remaining after provision for administration will be paid out to eligible Health Plan members by adjusting the reinsurance parameters on a retrospective basis.
4. *Pass Through Funding Savings*- These funds are determined by the federal government, which are calculated by using the difference between the 2nd lowest cost silver plan rate filed assuming the reinsurance mechanism is in place and the 2nd lowest cost silver plan rate filed assuming the reinsurance mechanism is not in place, as these rates are filed by issuers. The Health Plan shall obtain this information from the Department and file this information in the manner and format prescribed.

5. *Available Reinsurance Funds*- Available reinsurance funds shall be the total of the State Share and the Pass Through Funding Savings.
6. *Distribution of Available Reinsurance Funds*- The Health Plan shall distribute all available reinsurance funds. The distribution shall be a percentage of allowed claims. For plan year 2021, allowed claims shall include all claims incurred in calendar year 2021 and paid through June 30, 2022, where the incurred and paid amount exceeds \$60,000 but does not exceed \$400,000 per covered life. The Health Plan shall calculate the coinsurance percent as the ratio of Available Reinsurance Funds to Total Allowed Claims. If this ratio exceeds 100%, the Health Plan shall increase the upper attachment point.
7. *Reporting of Allowed Claims and Adjudication*- The Health Plan shall require individual health insurance issuers to submit allowed claims for determining reinsurance fund distributions in a manner and format that the Health Plan prescribes. For calendar year 2021, the Health Plan shall also obtain EDGE Server data from CMS⁸. The Health Plan shall use the EDGE Server data reported to authenticate the allowed claims reported by the issuers. Issuers shall be provided an opportunity to reconcile their submission with the EDGE Server data.
8. *Timing of Payments*- The NH Health Plan shall cause payments to be made to issuers with due consideration to CMS's required Medical Loss Ratio (MLR) rebate calculations and submissions.
9. *Care Management*- The Health Plan shall encourage insurer incentives for care management and claim adjudication by taking measures to ensure that incentives for care management and claim adjudication are not undermined.
10. *Amendments and Recommendations*- The Health Plan shall propose amendments and other recommendations regarding this program as they deem fit on or before August 1 of the 2nd calendar year preceding the plan year in which these changes would take effect. For example, the Health Plan shall submit amendments and recommendations for changes in the Plan of Operation for plan year 2022 on or before August 1, 2020. Any proposed changes shall further the mission of making individual health insurance affordable and accessible consistent with RSA 404-G:1.

⁸ CMS, pursuant to its authority under the ACA, operates the Risk Adjustment program. CMS gathers EDGE Server data pursuant to this authority.

11. *Estimated Reinsurance Parameters*- Assuming no change in program designs are recommended or adopted, on or before February 1 of the calendar year preceding the plan year, the Health Plan shall publish estimated reinsurance parameters and estimated premium savings based on actuarial modeling to facilitate pricing of the required with and without rates that issuers must file.

SO ORDERED.

Dated: Feb. 25, 2020



Alexander K. Feldvebel, Acting Insurance Commissioner