Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 1267 (Senator Middleton, *et al.*)

Finance Health and Government Operations

Maryland Health Benefit Exchange - Establishment of a Reinsurance Program

This emergency bill requires the Maryland Health Benefit Exchange (MHBE), in consultation with the Insurance Commissioner and as approved by the MHBE Board, to submit a State Innovation Waiver application for a federal Section 1332 waiver to establish a program for reinsurance and seek specified federal pass-through funding. The application must be submitted as soon as practicable but not later than July 1, 2018. MHBE, in consultation with the Commissioner and as approved by the MHBE Board, must establish and implement a specified State Reinsurance Program. Implementation of the program must be contingent on approval of the waiver application. By January 1, 2019, MHBE must adopt regulations implementing the program. The purpose, allowable uses, and funding sources of the MHBE Fund are also altered.

Fiscal Summary

State Effect: The waiver application can likely be handled with existing budgeted resources in FY 2018. Federal fund revenues and expenditures increase by a significant amount beginning as early as FY 2019 under the waiver. State general and/or special fund expenditures increase by a significant amount beginning in FY 2019 for the reinsurance program.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Federal Section 1332 Waiver

By December 31, 2018, the Commissioner may waive any notification or other requirements on a carrier under the Insurance Article in calendar 2018 due to implementation of the waiver.

State Reinsurance Program

The program must (1) provide reinsurance to carriers that offer individual health benefit plans in the State; (2) meet the requirements of an approved Section 1332 waiver; and (3) be consistent with State and federal law. The program must be designed to mitigate the impact of high-risk individuals on rates in the individual insurance market inside and outside MHBE.

Based on available funds, MHBE, in consultation with the Commissioner and as approved by the MHBE Board, must establish reinsurance payment parameters for calendar 2019 and each subsequent calendar year that include an attachment point, a coinsurance rate, and a coinsurance cap. MHBE, in consultation with the Commissioner and as approved by the MHBE Board, may alter these parameters as necessary to secure federal approval for a Section 1332 waiver.

Beginning January 1, 2019, funding for reinsurance through the program may be made by using (1) any pass-through funds received from the federal government under an approved Section 1332 waiver; (2) any funds designated by the federal government to provide reinsurance to carriers that offer individual health benefit plans in the State; and (3) any funds designated by the State to provide reinsurance to carriers that offer individual health benefit plans in the State.

Maryland Health Benefit Exchange Fund

The purpose and allowable uses of the MHBE Fund are expanded to include funding the State Reinsurance Program. The fund may consist of (1) any pass-through funds received from the federal government under an approved Section 1332 waiver; (2) any funds designated by the federal government to provide reinsurance to carriers that offer individual health benefit plans in the State; and (3) any funds designated by the State to provide reinsurance to carriers that offer individual health benefit plans in the State. These specific funds may only be used for the purposes of funding the State Reinsurance Program.

The bill also repeals obsolete language relating to transfers from the Maryland Health Insurance Plan.

Miscellaneous Provisions

The bill also repeals obsolete language relating to the transitional reinsurance and risk adjustment programs.

Current Law/Background:

Maryland Health Benefit Exchange

MHBE was created during the 2011 session to provide a marketplace for individuals and small businesses to purchase affordable health coverage. Through the Maryland Health Connection (MHC), Maryland residents can shop for health insurance plans, compare rates, and determine their eligibility for federal advanced premium tax credits (APTCs), cost-sharing reduction (CSR) plans, and public assistance programs such as Medicaid. Once an individual or family selects a qualified health plan (QHP), they enroll in that program directly through MHC.

For calendar 2018, 153,571 individuals have enrolled in a QHP through MHBE. Most enrollees are eligible for a federal APTC, and many also purchase a CSR plan.

Federal APTCs are available to individuals with incomes between 100% and 400% of federal poverty guidelines (FPG) and help to make monthly premiums more affordable. In calendar 2018, 121,400 individuals (79% of MHBE enrollees) qualify for an APTC. For January 2018, the monthly value of APTCs to Maryland residents was $63.9 million.

CSR plans are silver-level plans with reduced cost sharing that insurers must, under the federal Patient Protection and Affordable Care Act (ACA), offer to enrollees with incomes between 100% and 250% FPG. To compensate for additional claims expenses for CSR enrollees, the federal government made payments directly to insurers based on actual utilization. CSR payments were discontinued in October 2017. CSR payments to Maryland insurers were valued at about $65.0 million in calendar 2017.

Only two carriers currently participate in MHBE. Premium rates initially approved for silver plans (the most popular plan type) increased by between 22% (Kaiser health maintenance organization) and 52% (CareFirst preferred provider organization) for calendar 2018. Following elimination of CSR payments, rates were amended, adding an additional 21 to 27 percentage points to the rates for on-exchange silver plans. For calendar 2018, the lowest rates available for a 40-year-old nonsmoker range from $314 to $516 per month depending on the type of plan and carrier selected. For a 60-year-old

nonsmoker, the lowest rates range from $668 to $1,096 per month. These rates reflect the cost before application of any APTC. For most individuals enrolled in silver plans, any increase in premiums was likely offset by the APTC, as it is calculated based on the cost of the second-lowest silver plan available to the enrollee.

Federal Section 1332 Waiver

States can address insurance market issues through a federal State Innovation Waiver (Section 1332 waiver). Under such a waiver, states must provide access to quality health care that is at least as comprehensive and affordable and covers a comparable number of residents as would be covered absent a waiver, without increasing the federal deficit. Waivers can be approved for up to 5 years and can be renewed. Standards related to QHP establishment, consumer choice and insurance competition, APTCs and CSR plans, and employer-shared and individual-shared responsibility can be waived. The application process is robust, and a state must provide significant data, actuarial analyses and certifications, a detailed 10-year budget plan, analysis of the impact of the waiver on health insurance coverage, and a detailed implementation plan and timeline. Four states (Alaska, Hawaii, Minnesota, and Oregon) have approved waivers, three of which are being used to repurpose savings in federal APTC funding for reinsurance programs. By reducing the premium for the second-lowest cost silver plan, these states can receive federal pass-through funding based on the amount of APTCs that would have been provided to residents in the absence of the waiver.

Reinsurance

Reinsurance is insurance for insurers that protects against significant losses. An attachment point is the dollar amount of insurer costs above which an insurer is eligible for reinsurance. A coinsurance rate is the percentage of costs above the attachment point (and below any coinsurance cap) that are reimbursed through insurance. A coinsurance cap is the dollar amount threshold above which an insurer is no longer eligible for reinsurance.

The ACA included a federal transitional reinsurance program, for calendar 2014 through 2016, intended to stabilize the market due to an anticipated influx of higher-cost individuals once insurance became guaranteed issue. Maryland also provided a State Supplemental Reinsurance Program in calendar 2015 and 2016. Federal reinsurance payments totaled $217.2 million ($57.4 million in 2014, $103.9 million in 2015, and $55.9 million in 2016). State reinsurance payments totaled $60.8 million ($39.5 million in 2015 and $21.3 million in 2016). Funding for State reinsurance came from funds left over from the Maryland Health Insurance Plan (the State's former high-risk pool, which ended subsequent to passage of the ACA). A federal waiver is not required to implement a reinsurance program, unless a state wants to use federal pass-through funding.

Although the federal reinsurance program ended in calendar 2016, the U.S. Department of Health and Human Services (HHS) modified the federal risk adjustment program to include a reinsurance component beginning in calendar 2018. The program will reimburse for 60% of the cost of enrollees with total claims exceeding $1.0 million. HHS has proposed to continue this program in calendar 2019.

State Fiscal Effect:

Federal Revenues under a Section 1332 Waiver

Under a Section 1332 waiver, states may use federal pass-through funding to implement waiver provisions. Thus, federal fund revenues increase under the waiver by a significant but indeterminate amount beginning in fiscal 2019. Actual federal funding will be based on the difference between the amount of APTCs that would have been provided to Maryland residents in the absence of the waiver and the amount of APTCs actually provided under the waiver. Thus, to the extent provisions under the bill reduce premiums in the second-lowest cost silver plan (to which the APTC calculation is tied), Maryland will be able to repurpose the savings for the State Reinsurance Program.

Section 1332 Waiver Application

MHBE and the Maryland Insurance Administration can prepare and submit the Section 1332 waiver application using existing budgeted resources. The Department of Legislative Services assumes that the waiver could be approved by the federal government in time for implementation by January 1, 2019.

State Reinsurance Program

MHBE expenditures increase beginning in fiscal 2019 to establish a State Reinsurance Program. As permitted under the bill, the program may be funded with (1) any pass-through funds received from the federal government under an approved Section 1332 waiver; (2) any funds designated by the federal government to provide reinsurance to carriers that offer individual health benefit plans in the State; and (3) any funds designated by the State to provide reinsurance to carriers that offer individual health benefit plans in the State. Thus, general, special, and/or federal fund (if a waiver is granted) expenditures increase accordingly.

Additional Information

Prior Introductions: None.

Cross File: None designated; however, HB 1795 (Delegate Pena-Melnyk, *et al.* – Health and Government Operations) is identical.

Information Source(s): Maryland Health Benefit Exchange; Maryland Insurance Administration; Department of Legislative Services

Fiscal Note History: First Reader - March 14, 2018
md/ljm Third Reader - March 22, 2018

Analysis by: Jennifer B. Chasse

Direct Inquiries to:
(410) 946-5510
(301) 970-5510