THE STATE of ALASKA

GOVERNOR BILL WALKER

SENATE LABOR AND COMMERCE

UPDATE ON THE HEALTHCARE INSURANCE MARKET

by

Department of Commerce, Community, and Economic Development

Division of Insurance

Director Lori Wing-Heier

January 24, 2017

Where we left off in June 2016

- June 2016 – HB374 ACHIA passed with $55M for FY17
- August 2016 - Division begins Section 1332 Waiver
- September 2016 – Premera 2017 individual market rates average increase of 7.3% (40+% had been expected)
- January 2017– Division filed Section 1332 waiver with CMS and IRS
- January 17, 2017 – DHHS deems our waiver application with caveats

Governor’s Budget FY 2018 –HB57 and SB22

* Sec. 28. Section 2, ch. 3, 4SSSLA 2016, page 47, lines 23 - 27, is repealed.

Sec. 10

(g) The sum of $55,000,000 is appropriated from the Alaska comprehensive health insurance fund (AS 21.55.430) to the Department of Commerce, Community, and Economic Development, division of insurance, for the calendar year 2018 Alaska Reinsurance program for the fiscal year ending June 30, 2018, and June 30, 2019.

(h) The sum of $55,000,000 is appropriated from the Alaska comprehensive health insurance fund (AS 21.55.430) to the Department of Commerce, Community, and Economic Development, division of insurance, for the calendar year 2017 Alaska Reinsurance program for the fiscal year ending June 30, 2017, and June 30, 2018.

- \$55M for FY17was to pay high-cost claims incurred in CY18
- Insurance policies/plans in the individual market are effective January 1st through December 31st
- Requires an amendment to resolve inherent conflict between FY and CY appropriations
- Need flexibility to pay/fund ACHIA for that period and claims incurred during that period but not yet billed

Section 1332 State Innovation Waivers

HB 374

* **Sec. 5.** AS 21.96 is amended by adding a new section to read:

Sec. 21.96.120. Waiver for state innovation. The director may apply to the United States Secretary of Health and Human Services under 42 U.S.C. 18052 for a waiver of applicable provisions of P.L. 111-148 (Patient Protection and Affordable Care Act) with respect to health insurance coverage in the state for a plan year beginning on or after January 1, 2017. The director may implement a state plan meeting the waiver requirements in a manner consistent with state and federal law and as approved by the United States Secretary of Health and Human Services.

Section 1332 provides that:

"a State may apply to the Secretary for the waiver of all or any requirements described in paragraph (2) with respect to health insurance coverage within that State beginning on or after January 1, 2017. Such application shall-

(A) be filed at such time and in such manner as the Secretary may require;

(B) contain such information as the Secretary may require, including-

   i. a comprehensive description of the State legislation and program to implement a plan meeting the requirements for a waiver under this section; and

   ii. A 10-year budget plan for such plan that is budget neutral for the Federal Government; and

(C) Provide an assurance that the State has enacted the law described in subsection (b)(2)."

What can be waived in plain English?

- Benefits and Subsidies – Rules governing covered benefits, as well as the subsidies that are available through the marketplace. States reallocating premium tax credits and cost-sharing reductions may receive the aggregate value of those subsidies to implement their alternative approach
- Marketplace and Qualified Health Plans – States may replace their marketplaces or supplant the plan certification process with alternative ways to provide health plan choice; determine eligibility for subsidies and enroll consumers in plans;
- The Individual Mandate – States may modify or eliminate the requirement that individuals maintain minimum essential coverage;
- The Employer Mandate – States may modify or eliminate the requirement that large employers offer affordable coverage to their full-time employees

The "Guardrails"

Each waiver application must satisfy four criteria:

1. Comprehensive Coverage – coverage provided to consumers remains "at least as comprehensive" as coverage absent the waiver;
2. Affordable Coverage – "coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable" as coverage absent the waiver;
3. Scope of Coverage – coverage to "at least a comparable number of residents" as would have been covered without the waiver; and
4. Federal Deficit – The waiver must not increase the federal deficit.

What did Alaska's application contain?

- The application for the waiver must include:
  - ✓ Compliance with the application procedures of 31 CFR 33.108 (a)(2)(iv) and 45CFR 155.1308(a)(2)(iv)
  - ✓ Provides written evidence of the State's compliance with the public notice requirements
  - ✓ A comprehensive description of the enacted State legislation and program to implement the waiver under section 1332;
  - ✓ A copy of the enacted State legislation authorizing such waiver requested;
  - ✓ A list of the provisions of the law that the State seeks to waive including a brief description of the reason for the specific request(s); and
  - ✓ The analyses, actuarial certifications, data, assumptions, targets and other information sufficient to provide the Secretaries with the necessary data to determine that the State's proposed waiver provides coverage that is at least as comprehensive as in the absence of a waiver, would provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable absent the waiver, provide coverage to at least a comparable number of residents and would not increase the federal deficit.

- Alaska's waiver application can be viewed at:

  (https://www.commerce.alaska.gov/web/Portals/11/Pub/Alaska-1332-Waiver-Application-with-Attachments-Appendices.pdf?ver=2017-01-05-112938-193)

HB 374

* **Sec. 3.** AS 21.55 is amended by adding a new section to read:

Sec. 21.55.430. Alaska comprehensive health insurance fund. (a) The Alaska comprehensive health insurance fund is established in the general fund. The Department of Administration shall separately account for revenue collected under AS 21.09.210, AS 21.33.055, 21.33.061, AS 21.34.180, and AS 21.66.110 and deposit net proceeds into the Alaska comprehensive health insurance fund. The Department of Administration shall deposit interest earned on the Alaska comprehensive health insurance fund in the general fund.

(b) The legislature may use the annual estimated balance in the Alaska comprehensive health insurance fund to make appropriations to the Department of Commerce, Community, and Economic Development to fund the reinsurance program under this chapter.

(c) Payment for claims under the reinsurance program under this chapter is subject to appropriation.

(d) Money in the fund does not lapse.

(e) Nothing in this section creates a dedicated fund.

(f) In this section, "net proceeds" includes

(1) revenue accounted for under (a) of this section, less all return premiums, fees under AS 23.05.067, errors, and other adjustments;

(2) penalties and interest on late payments accounted for under (a) of this section.

* **Sec. 6.** AS 21.55.430 is repealed June 30, 2018.

APTCs and Individual Market Enrollment by Scenario and Year

	APTCs			Individual Market Enrollment		
Year	Baseline	Waiver	Difference	Baseline	Waiver	Difference
2015	94,468,271	94,468,271	-	28,159	28,159	-
2016	135,348,085	135,348,085	-	24,064	24,064	-
2017	185,716,278	185,716,278	-	23,822	23,822	-
2018	233,898,461	182,260,689	(51,637,772)	21,253	22,894	1,641
2019	258,351,449	202,372,542	(55,978,906)	21,993	23,558	1,565
2020	279,343,570	219,162,267	(60,181,304)	21,773	23,548	1,775
2021	312,617,789	247,210,983	(65,406,805)	22,176	23,410	1,234
2022	342,289,634	272,477,673	(69,811,961)	22,656	23,866	1,210
2023	380,127,501	303,407,137	(76,720,364)	23,539	24,721	1,182
2024	412,662,662	329,994,712	(82,667,950)	23,713	24,940	1,227
2025	449,544,666	359,539,993	(90,004,673)	24,196	24,937	741
2026	488,186,123	390,635,284	(97,550,838)	24,520	25,263	742

While our modeling suggests greater actions will be needed to increase the affordability of coverage, the reinsurance program will help bring some much needed stability to the individual health insurance market in Alaska.

Oliver Wyman/Marsh & McLennan Companies-November 2016

Department of Health and Human Services

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

JAN 1 7 2017

The Honorable Bill Walker
Governor of Alaska
Juneau, AK 99811

Dear Governor Walker:

Thank you for letter and for Alaska's application for a State Innovation Waiver under Section 1332 of the Affordable Care Act (ACA), under which Alaska has proposed to waive section 1301(a)(2) of the ACA and implement the Alaska Reinsurance Program (ARP) for 2018 and future years.

On January 17, 2017, the Departments of Health & Human Services and the Department of the Treasury (the Departments) indicated that they had reviewed your application and made a preliminary determination that the application is complete, in accordance with 45 CFR 155.1308(c). The decision of the Departments regarding approval of the waiver will be issued within 180 days in accordance with 45 CFR 155.1308(d).

We have not yet reviewed the State's application for compliance with statutory and regulatory requirements, but as Alaska begins its legislative session and issuers in Alaska prepare for the 2018 plan year I wanted to provide additional feedback on the material in your application. A waiver under which the state seeks to implement the ARP under a state plan contingent upon approval of the waiver should be approvable under our guidance and section 1332, if these requirements are met. In addition, the state should be able to receive pass-through funding associated with any resulting reduction in federal spending on Marketplace financial assistance due to the structure of the state plan.

Your application describes a process under which the state would appropriate funds in future legislation to fully fund the ARP, consistent with the actuarial analyses and assurances in your application, and contingent upon approval of the waiver. I would note that before the Departments can approve the waiver as proposed, legislation appropriating the funds for the ARP, contingent upon approval of the waiver, must be enacted in Alaska. Such legislation must be fully consistent with the terms outlined in the waiver application in order for us to be able to approve the application, should we determine that it meets all statutory and regulatory requirements.

We will be in touch if we need additional information as we review Alaska's application. Please do not hesitate to contact us if you have any questions.

Sincerely,

Sylvia M. Burwell

Sylvia M. Burwell

cc: The Honorable Jack Lew, Department of the Treasury

Centers for Medicare and Medicaid Services

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR CONSUMER INFORMATION & INSURANCE OVERSIGHT

January 17, 2017

VIA ELECTRONIC MAIL: lori.wing-heier@alaska.gov
Mrs. Lori K. Wing-Heier
Director
Alaska Division of Insurance
550 West 7th Avenue, Suite 1560
Anchorage, AK 99501-2567

Dear Mrs. Wing-Heier: Lori,

Thank you for your submission on January 3, 2017 of Alaska's application for a State Innovation Waiver under Section 1332 of the Affordable Care Act (ACA). Alaska would waive requirements of the ACA and implement the Alaska Reinsurance Program (ARP) for 2018 and future years. The Department of Health & Human Services (HHS) and the Department of the Treasury (the Departments) have completed a preliminary review of the application in accordance with 45 CFR 155.1308(c), and we have made a preliminary determination that your application is complete.

Pursuant to 45 CFR 155.1308(d), the date of this letter marks the beginning of the Federal public notice process and 180-day Federal decision-making period. Public comments on the application will be accepted by the Departments from January 17, 2017 until February 16, 2017, and more information can be found on the CCIIO website.[1] The decision of the Secretaries of HHS and the Treasury will be issued within 180 days in accordance with 45 CFR 155.1308(c) and other applicable regulations. We look forward to working with you on your application and will be in touch if we need additional information. Please do not hesitate to contact us if you have any questions.

Sincerely,

Kevin J. Counihan
Chief Executive Officer, Health Insurance Marketplaces
Director, Center for Consumer Information & Insurance Oversight

Cc: Mark J. Mazur, Assistant Secretary for Tax Policy, U.S. Department of the Treasury

[1] https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-.html

How the ARP and Section 1332 Waiver would work

Calendar Year	Projected Alaska Reinsurance Fund[1]	Final Savings Federal Pass-Through Funds[2]	Estimated State Funding
2018	$59,983,000	$48,973,684	$11,009,316
2019	$64,126,326	$52,260,335	$11,865,991
2020	$68,950,229	$56,108,411	$12,841,818
2021	$74,137,010	$61,486,732	$12,650,278
2022	$79,789,956	$65,612,014	$14,177,942
2023	$85,873,941	$72,231,851	$13,660,090
2024	$92,333,808	$77,717,468	$14,616,340
2025	$98,711,766	$84,814,665	$13,897,101
2026	$105,530,281	$91,785,506	$13,744,775

(1) Oliver Wyman Actuarial Analysis
(2) ISER Economic Analysis

- 1332 waiver applications must evaluate four "guardrails"
- Actuarial analysis shows the federal Advanced Premium Tax Credit savings but not the costs to the federal government due to the ARP
- ISER's study evaluates the impact on federal budget neutrality by evaluating the expected loss of federal revenue from the Alaska individual market with the ARP (reduced individual shared responsibility payments, provider fees, and exchange user fees)
- ISER used conservative numbers and estimates the loss to the federal government higher than is likely
- The APTC savings amount has been reduced to reflect the reduced revenue to the federal government. Alaska anticipates federal pass-through funding in this amount

ACA – Transition Issues

- With the incoming administration changes underway to the Affordable Care Act
- The Department of Health and Social Services, the Division of Insurance and several others representing the medical providers and insurers met with Sen. Lisa Murkowski on January 14th at a listening session in Anchorage
- Various draft bills from Rep. Paul Ryan to Senator Bill Cassidy
- All present different options for providing healthcare insurance
- All require review for their impact on Alaska and Alaskans

80th Percentile – Public Scoping Hearing

Notice of Public Scoping for Possible Changes to Regulation that Requires Health Care Insurers to Pay Out-Of-Network Health Care Providers for a Covered Service or Supply at No Less Than the 80th Percentile of Charges in the Geographical Area

The Alaska Division of Insurance (division) seeks public input concerning whether the provision under 3 AAC 26.110, commonly known as the "80th percentile rule" (rule), should be amended, repealed, or remain unchanged. Additionally, if the rule were to be amended or repealed, the division seeks public input on ways the division could provide for the same or greater consumer protections that the rule currently provides.

3 AAC 26.110(a) in relevant part provides: "A person that provides coverage in this state for health care services or supplies on an expense incurred basis for which benefits are based on an amount that is less than the actual amount billed for the health care services or supplies shall… determine the final payment for a covered service or supply based on an amount that…is equal to or greater than the 80th percentile of charges [based on a statistically credible profile for each geographical area] for the health care services or supplies." Please note that federal agencies regulate self-funded health benefit plans that many large employers in the state have established on behalf of their employees. Because the division does not regulate self-funded health benefit plans, the rule does not apply to them.

The intent of the rule is to reduce the balance billing that a consumer receives from an out-of-network heath care provider by requiring health care insurers to pay claims for health care services and supplies based on an amount that is equal to or greater than the 80th percentile of charges in a geographical area. Balance billing occurs when out-of-network providers bill a patient for the difference between the amount they charge and the amount that the consumer's insurer pays under the consumer's policy.

The rule, however, has been criticized for influencing the health care market in a manner that drives up the cost of health care in the state. Specifically, the Alaska Health Care Commission, in their *Findings and Recommendations 2009-2013*, felt that the rule "exacerbated" relative health care provider leverage in pricing stating: "Since many providers have over 20% of their market share, this implies that those providers can ensure that their charges are below the 80th percentile and therefore, receive payment for their full billed charges."

The division is in the information gathering stage and seeks comments and recommendations from members of the public through this scoping process before a decision is made on whether to make changes to 3 AAC 26.110. The division is not currently proposing any changes to the regulations. There are no draft regulations to review.

The division invites you to attend public hearings to be held on **January 6, 2017** from 10:00 a.m. to 12:00 p.m. (noon), and from 5:30 p.m. to 7:30 p.m. to share your oral or written comments on the rule and the rule's effect on consumers, balance billing, and health care costs. The hearing shall be simultaneously held at the following locations:

Anchorage

Atwood Building, 1st Floor, Room 102, located at 550 West 7th Avenue, Anchorage, Alaska.

Juneau

State Office Building, 9th Floor, Conference Room A, located at 333 Willoughby Avenue, Juneau, Alaska.

The hearings may be extended to accommodate those present before 12:00 p.m. or 7:30 p.m. who did not have an opportunity to comment. If you are unable to attend a hearing in person and would like to participate by teleconference, please call 1 (800) 315-6338 and enter access code 42070 followed by the # (pound sign).

You are also invited to submit written comments to the Alaska Division of Insurance, Attention Chip Wagoner, P.O. Box 110805, Juneau, AK 99811-0805; by email to chip.wagoner@alaska.gov; or by fax to (907) 465-3422. All comments must be received no later than 8:00 p.m., **January 6, 2017.**

If you are a person with a disability who needs a special accommodation in order to participate in the process, please contact Chris Napoleon at chris.napoleon@alaska.gov or (907) 269-7892 (voice) or Alaska Relay assisted communications at 1 (800) 770-8973 or 711 no later than January 4, 2017 to ensure any necessary accommodations can be provided.

DATE: December 2, 2016

Lori Wing-Heier
Director

Comments Received

- Sessions were well attended
- Transcribing the hearings; will be available on our website
- Over 60 written comments received from members of the public, medical providers and the insurance industry

  https://www.commerce.alaska.gov/web/Portals/11/Pub/80th-percentile-rule-comments.pdf?ver=2017-01-09-165346-173

- Created in 1990, based on NAIC Model Act (MDL 520).
- Purpose is to protect consumers against failure of performance of contractual obligations under life and health insurance policies and annuity contracts because of the impairment or insolvency of a guaranty association member insurer that issued the policies or contracts.
- Unlike the property and liability lines of business, life and annuity contracts in particular are long-term arrangements for security.
- Ability to offer continued coverage is an important protection available through the Guaranty Association, as an insured may have impaired health or be at an advanced age and unable to obtain new or similar coverage from other insurers.
- Membership in the association is mandatory for every insurer covered by the Act.
- Members are assessed to provide funds for the administrative and legal costs of the association. If a member is found to be an impaired or insolvent insurer, the association further assesses members as necessary to meet the duties of the association.
- Alaska statutes last substantively updated in 2000 .
- This legislation would bring Alaska's statute current with 2009 and 2016 NAIC revisions.

Summary of content of bill

- Updates AS 21.79 (the Alaska Life and Health Insurance Guaranty Association Act) to adopt and remain consistent (with one exception) the latest national standards set forth in the National Association of Insurance Commissioners (NAIC) Life and Health Insurance Guaranty Association Model Act (MDL 520).
- Requires hospital and medical service corporations to become members of the association. The NAIC model specifically excludes these corporations from the definition of "member insurer". Currently, 20 states require for-profit and non-profit hospital and medical service corporations to be members of their state's guaranty association and another six states and one territory require for-profit hospital and medical service corporations to be members of their association.
- Increases the benefits for which the association may become liable, in the aggregate, to increase the coverage limit for net cash surrender and net cash withdrawal values of annuities. from $100,000 to $250,000 with respect to an individual participating in a governmental retirement benefit plan established under 26 U.S.C. 401, 26 U.S.C. 403(b) or 26 U.S.C. 457 and covered by an unallocated annuity contract, or to a beneficiary of the individual if the individual is deceased.

Summary of content of bill (continued)

- Increases the benefits for which the association may become liable, in the aggregate, for net cash surrender and net cash withdrawal values, if any, from $100,000 to $250,000 with respect to each payee of a structured settlement annuity, or beneficiary of the payee if the payee is deceased.
- Provides authority for the association to provide loans to assure payment of the contractual obligations of the impaired insurer until those obligations are guaranteed, reinsured, or assumed.
- Provides authority for the association to impose a permanent policy or contract lien under a guarantee, assumption, or reinsurance agreement if the policy or contract lien is approved by a court and the association finds that the amount that may be assessed under AS 21.79 is less than the amount needed to assure full and prompt performance of the association's duties under the chapter.
- Increases the amount of a non pro rata assessment of members by the association board from $250 per calendar year to $500 per calendar year.
- Requires the association board to adopt policies and procedures for addressing conflicts of interest, removing board members for cause, and removing board members who become impaired or insolvent
- Removes the requirement that records of meetings of the association may only be made public after an insurer is no longer impaired or insolvent.
- Extends the immunity protections under AS 21.79.140 to organizations of one or more state guaranty associations of similar purposes and to the organizations' agents and employees.
- Clarifies limitations of coverage on unallocated annuity contracts by either one contract owner or one plan sponsor whose plan owns one or more unallocated annuity contracts to $5,000,000 in benefits regardless of the number of policies and contracts held by the owner.
- Includes changes with regard to the guaranty association's rights to succeed to a ceding member insurer's rights and obligations under reinsurance contracts and provides guidance in the mechanics of the succession.

Conclusion

Questions?