THE STATE OF NEW HAMPSHIRE
INSURANCE DEPARTMENT

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The Honorable Lamar Alexander
Chairman
Senate Committee on Health, Education, Labor and Pension
Washington, D.C. 20510-6300

Dear Chairman Alexander:

I am writing in response to your August 30, 2017 letter seeking input on legislative changes to give states more flexibility to stabilize their individual health insurance markets. Thank you for conducting bipartisan hearings on this critically important issue and for giving state governors and insurance regulators the opportunity to provide their perspectives.

New Hampshire's individual health insurance market faces unprecedented challenges for 2018 and beyond. In 2016, five issuers participated in the state's federally-operated Marketplace. For 2018, we expect to have only three issuers, as both of the co-ops that previously operated in the state will have left the market. In addition, New Hampshire anticipates record rate increases for 2018. Even without consideration of an end to Cost Sharing Reduction (CSR) funding, two of New Hampshire's three issuers have proposed rate increases in excess of 40%. The state gave issuers the opportunity to file rates assuming a lack of CSR funding; these rates, though not yet public, are likely to be even higher.

Over the past few months, New Hampshire has taken rapid and well-considered steps aimed at stabilizing its individual health insurance markets, including the passage of legislation in June, and the posting of a draft 1332 waiver application in July. Sadly, these efforts proved fruitless due to the procedural and substantive constraints inherent in the section 1332 innovation waiver process. We earnestly hope you and your committee will find a way forward to prevent New Hampshire consumers, particularly those who do not qualify for federal tax credits, from facing massive premium increases in 2018.

Our responses to your specific questions are as follows:

1. What legislative actions do you recommend be taken in order to stabilize individual insurance premiums for the 2018 plan year?

Appropriate full funding for CSRs through the end of 2019. CSRs are not, as they have been characterized by some, a "bailout" of insurance companies; rather, they are a reimbursement for expenditures that insurance issuers are required by law to make under the Affordable Care Act (ACA). Specifically, issuers that sell Qualified Health Plans (QHPs) on the Exchange must offer Silver plans with lower deductibles and coinsurance – plans with a 94% actuarial value, an 87% actuarial value and a 73% actuarial value, depending on the purchaser's income - for the same premium that is charged for the 70% actuarial value Silver plan. The ACA also clearly states that the Secretary "shall make periodic and timely payments to the issuer equal to the value of the reductions" to compensate them for Section 1402's requirement.

Issuers calculate their rates far in advance and, if they choose to offer QHPs, must include in that rate calculation the cost of offering the required Silver plan variations. In addition, at least in New Hampshire, once an issuer has sold a plan to a consumer, the premium for the plan is locked in for a 12-month period. Continued uncertainty about the reimbursements fuels dramatic premium increases and could lead issuers to exit the market. This hurts consumers, most of all those who cannot get coverage through work and do not qualify for federal subsidies. It also is likely to increase federal expenditures on Advance Premium Tax Credits (APTC) because these payments are tied to market premiums.

Create and fund a market stabilization mechanism that would reduce excess risk in the individual market. The individual market is inherently subject to excess risk because of selection issues. There are a variety of potential approaches that could reduce this excess risk, including reinstating the federal reinsurance program or making other funding available to states to use as they see fit to stabilize their markets. State funding could be through modifications to the Section 1332 waiver process (as discussed further in response to question 3 below) or through a new grant program that would not involve a waiver of any ACA provisions.

2. Has your state applied for, or considered applying for, a Section 1332 State Innovation Waiver to help stabilize the individual market or develop broader state-based health coverage reforms?

Yes. As noted above, New Hampshire passed legislation authorizing the state to create a reinsurance program and to apply for a Section 1332 waiver for market stabilization, but the contemplated approach proved not to be viable due to the limitations of the Section 1332 process. Following passage of state legislation in June of 2017, the New Hampshire Insurance Department (NHID) facilitated discussions with the board of the New Hampshire Health Plan, the entity that operated the state's high risk pool prior to passage of the ACA, and hired an actuarial firm to assist in designing an appropriate reinsurance mechanism. As specified in the state statute, the approach was then posted for public comment and presented for approval by New Hampshire's Joint Legislative Health Reform Oversight Committee.

Market stabilization in New Hampshire is unique because of the state's approach to Medicaid expansion. Under the Premium Assistance Program (PAP), which is authorized by an existing Medicaid 1115 waiver, the state purchases Silver-level QHPs to cover the expansion population. PAP members are enrolled in QHPs and constitute approximately half of the state's individual market single risk pool.

The approach brought forward by the NHID to the legislative committee would have been funded in part via an assessment on insurance carriers, and in part through pass-through funding under Section 1332(a)(3). The NHID had initially envisioned that the pass-through funding available to supplement state spending on the reinsurance mechanism would include federal savings associated with the reduction in premiums paid for the PAP population. However, it became clear that under Section 1332, as it is currently worded, the federal savings associated with the PAP program are not eligible for pass-through.

The New Hampshire legislative committee approved the idea of moving forward with a waiver, but without the insurance carrier assessments associated with the NHID's proposal. Ultimately, although the 1332 waiver application had been posted for public comment, it was not submitted for federal consideration. Thus, at present, no funds are available to stabilize New Hampshire's individual market in 2018, despite that fact that such an effort would result in substantial federal savings.

3. If your state has applied for a Section 1332 State Innovation Waiver, or is considering applying for such a waiver, can you please share your recommendations on how Congress could improve upon the waiver requirements and give states the ability to establish broader state-based coverage policy reforms under a 1332 waiver than is permitted under current law?

From New Hampshire's perspective, the most important change would be to amend Section 1332 (a)(3) to broaden the available pass-through funding to include *all* federal savings that result from the changes made under the waiver. Such language in the statute would be consistent with guidance issued in 2015 by the federal agencies on deficit neutrality under Section 1332, and it would have enabled New Hampshire to reinvest the federal savings associated with PAP members who are enrolled in QHPs and are part of the individual market single risk pool.

A few additional changes would also be helpful. Given that market stabilization is of urgent importance and involves only a very limited waiver of ACA provisions (i.e., waiver of the individual market single risk pool requirement to the extent needed to operate the reinsurance mechanism), it would make sense to create an expedited process for obtaining a limited waiver for market stabilization. This limited waiver should not be subject to the extensive procedural requirements of Section 1332 and 45 C.F.R. Part 155, but should be approvable upon a showing that the state has legal authority to operate the proposed mechanism, and that the mechanism will result in quantified federal savings. Finally, the Section 1332 waiver process requires States to

have already established savings, i.e. seed money. The process would be much improved if funds were available to States to promote market stability and federal savings, without the requirement of raising seed money up front.

My staff contact on this issue is Health Policy Legal Counsel Jennifer Patterson, who may be reached at (603) 271-2145, or at Jennifer.patterson@ins.nh.gov.

Thank you again for considering the state's input.

Very truly yours,

Roger A. Sevigny

Cc: Governor Christopher T. Sununu
NH Senate President Chuck Morse
NH Speaker Shawn N. Jasper
NH Congressional Delegation
- Senator Jeanne Shaheen, Senator Margaret (Maggie) Hassan, Representative Ann McLane Kuster, Representative Carol Shea-Porter

NH DHHS Commissioner Jeffrey Meyers