

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1725

S.P. 570

In Senate, May 19, 2021

**An Act To Clarify the Deferral of the Pooled Market and Link
Small Employer Clear Choice to Pooling in the Made for Maine
Health Coverage Act**

Reference to the Committee on Health Coverage, Insurance and Financial Services
suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SANBORN of Cumberland. (GOVERNOR'S BILL)

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 24-A MRSA §2792, sub-§1**, as enacted by PL 2019, c. 653, Pt. B, §2, is
3 amended to read:

4 **1. Pooled market established.** Subject to the requirements of subsection 5, all
5 individual and small group health plans offered in this State with effective dates of coverage
6 on or after January 1, ~~2022~~ 2023 must be offered through a pooled market. A health
7 insurance carrier offering an individual health plan subject to this section shall make the
8 plan available to all eligible small employers within the plan's approved service area, and
9 a health insurance carrier offering a small group health plan subject to this section shall
10 make the plan available to all eligible individuals residing within the plan's approved
11 service area. This subsection does not require the Maine Health Insurance Marketplace
12 established in Title 22, chapter 1479 to offer identical choices of health plans to individuals
13 and to small employers under Title 22, chapter 1479.

14 **Sec. 2. 24-A MRSA §2792, sub-§5**, as enacted by PL 2019, c. 653, Pt. B, §2, is
15 amended to read:

16 **5. Preconditions for pooled market.** This section may not be implemented unless
17 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A are adopted to
18 implement this section and the Federal Government approves a state innovation waiver
19 amendment that extends reinsurance under section 3953 to the pooled market established
20 pursuant to this section based on projections by the superintendent that both average
21 individual premium rates and average small group premium rates would be the same or
22 lower than they would have been absent the provisions of this section and chapter 54-A. If
23 this section is not implemented, the superintendent shall conduct an analysis of alternative
24 proposals to improve the stability and affordability of the small group market.

25 **Sec. 3. 24-A MRSA §2793**, as enacted by PL 2019, c. 653, Pt. B, §2, is amended to
26 read:

27 **§2793. Clear choice designs**

28 The superintendent shall develop clear choice designs for ~~the individual and small~~
29 ~~group health insurance markets~~ health plans in order to reduce consumer confusion and
30 provide meaningful choices for consumers by promoting a level playing field on which
31 carriers compete on the basis of price and quality.

32 **1. Clear choice design.** For the purposes of this section, "clear choice design" means
33 a set of annual copayments, coinsurance and deductibles for all or a designated subset of
34 the essential health benefits. An individual health plan subject to section 2736-C or ~~small~~
35 ~~group~~ a pooled market health plan subject to section 2792 must conform to one of the clear
36 choice designs developed pursuant to this section unless ~~an opt-out request is granted~~ it is
37 approved as an alternative plan under subsection 4.

38 **2. Development of clear choice designs.** The superintendent shall develop clear
39 choice designs in consultation with working groups consisting of consumers, carriers,
40 health policy experts and other interested persons. The superintendent shall adopt rules for
41 clear choice designs, taking into consideration the ability of plans to conform to actuarial
42 value ranges, consumer needs and promotion of benefits with high value and return on
43 investment. The superintendent shall develop at least one clear choice design for each tier

1 of health insurance plan designated as bronze, silver, gold and platinum in accordance with
2 the federal Affordable Care Act. Rules adopted pursuant to this subsection are routine
3 technical rules as defined in Title 5, chapter 375, subchapter 2-A. Clear choice designs
4 apply to all individual ~~and small group~~ health plans offered in this State with effective dates
5 of coverage on or after January 1, 2022 and to all small group health plans offered through
6 the pooled market under section 2792.

7 **3. Annual review.** The superintendent shall consider annually whether to revise,
8 discontinue or add any clear choice designs for use by carriers in the following calendar
9 year, including but not limited to considering whether deductible and copayment levels
10 should be changed to reflect medical inflation and conform with actuarial value and annual
11 maximum out-of-pocket limits.

12 **4. Alternative plan designs.** In addition to one or more health plans that include cost-
13 sharing parameters consistent with a clear choice design developed pursuant to this section,
14 a carrier may offer up to 3 health plans plan designs that modify one or more specific cost-
15 sharing parameters in a clear choice design if the carrier submits an actuarial certification
16 to the satisfaction of the superintendent that the alternative plan design offers significant
17 consumer benefits and does not result in adverse selection. An alternative plan design may
18 be offered only in a service area where the carrier offers at least one clear choice design
19 plan at the same tier.

20 **Sec. 4. 24-A MRSA §3957, sub-§7,** as enacted by PL 2011, c. 90, Pt. B, §8, is
21 amended to read:

22 **7. Excess funds.** If assessments and other receipts by the association, board or
23 administrator selected pursuant to section 3956 exceed the actual losses and administrative
24 expenses of the association, the board shall hold the excess as at interest and shall use those
25 excess funds to offset future losses or to ~~reduce reinsurance premiums~~ make adjustments
26 to a reinsurance program operated pursuant to section 3953. As used in this subsection,
27 "future losses" includes reserves for claims incurred but not reported.

28 **Sec. 5. 24-A MRSA §3958, sub-§1,** as amended by PL 2019, c. 653, Pt. B, §18, is
29 further amended to read:

30 **1. Reinsurance amount.** A member insurer offering an individual health plan under
31 section 2736-C must be reinsured by the association to the level of coverage provided in
32 this subsection and is liable to the association for any applicable reinsurance premium at
33 the rate established in accordance with subsection 2. For calendar year ~~2022~~ 2023 and
34 subsequent calendar years, the association shall also reinsure member insurers for small
35 group health plans issued under section 2808-B, unless otherwise provided in rules adopted
36 by the superintendent pursuant to section 2792, subsection 5.

37 A. Beginning July 1, 2012, except as otherwise provided in paragraph A-1, the
38 association shall reimburse a member insurer for claims incurred with respect to a
39 person designated for reinsurance by the member insurer pursuant to section 3959 after
40 the insurer has incurred an initial level of claims for that person of \$7,500 for covered
41 benefits in a calendar year. In addition, the insurer is responsible for 10% of the next
42 \$25,000 of claims paid during a calendar year. The amount of reimbursement is 90%
43 of the amount incurred between \$7,500 and \$32,500 and 100% of the amount incurred
44 in excess of \$32,500 for claims incurred in that calendar year with respect to that
45 person. For calendar year 2012, only claims incurred on or after July 1st are considered

1 in determining the member insurer's reimbursement. With the approval of the
2 superintendent, the association may annually adjust the initial level of claims and the
3 maximum limit to be retained by the insurer to reflect changes in costs, utilization,
4 available funding and any other factors affecting the sustainable operation of the
5 association.

6 A-1. In any plan year in which a pooled market is operating in accordance with section
7 2792, the association shall operate a retrospective reinsurance program providing
8 coverage to member insurers for all individual and small group health plans issued in
9 this State in that plan year. For plan years beginning in 2022, if the pooled market has
10 not been implemented pursuant to section 2792, subsection 5, the association may
11 operate a retrospective reinsurance program for individual health plans, subject to the
12 approval of the superintendent.

13 (1) The association shall reimburse member insurers based on the total eligible
14 claims paid during a calendar year for a single individual in excess of the
15 attachment point specified by the board. The board may establish multiple layers
16 of coverage with different attachment points and different percentages of claims
17 payments to be reimbursed by the association.

18 (2) Eligible claims by all individuals enrolled in individual or small group health
19 plans in this State may not be disqualified for reimbursement on the basis of health
20 conditions, predesignation by the member insurer or any other differentiating
21 factor.

22 (3) The board shall annually review the attachment points and coinsurance
23 percentages and make any adjustments that are necessary to ensure that the
24 retrospective reinsurance program operates on an actuarially sound basis.

25 (4) The board shall ensure that any surplus in the retrospective reinsurance
26 program at the conclusion of a plan year is used to lower attachment points,
27 increase coinsurance rates or both for that plan year, consistent with its
28 responsibility to ensure that the program operates on an actuarially sound basis.

29 B. A member insurer shall apply all managed care, utilization review, case
30 management, preferred provider arrangements, claims processing and other methods
31 of operation without regard to whether claims paid for coverage are reinsured under
32 this subsection. A member insurer shall report for each plan year the name of each
33 high-priced item or service for which its payment exceeded the amount allowed for
34 eligible claims and the name of the provider that received this payment. The
35 association shall annually compile and publish a list of all reported names.

36 **SUMMARY**

37 This bill changes the effective date of individual and small group health plans that must
38 be offered in the State through a pooled market from January 1, 2022 to January 1, 2023.
39 The bill requires the Superintendent of Insurance to develop clear choice designs for all
40 individual health plans offered in the State with effective dates on or after January 1, 2022
41 and for all pooled market health plans. The bill clarifies that health insurance carriers may
42 offer up to 3 health plan designs that modify one or more cost-sharing parameters of a clear
43 choice design. The bill modifies the permissible use of excess funds derived from
44 assessments against insurers under the Maine Revised Statutes, Title 24-A, section 3957.

1 The bill delays the implementation of the requirement that the Maine Guaranteed Access
2 Reinsurance Association reinsure certain insurers offering small group health plans in the
3 State to calendar year 2023.