

WES MOORE
Governor

ARUNA MILLER
Lt. Governor



Maryland
INSURANCE ADMINISTRATION

KATHLEEN A. BIRrane
Commissioner

TAMMY R. J. LONGAN
Acting Deputy Commissioner

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2215 Fax: 410-468-2204
1-800-492-6116 TTY: 1-800-735-2258
www.insurance.maryland.gov

Date: March 7, 2023

Bill # / Title: Senate Bill 843 – Climate Change Adaptation and Mitigation Payment Program and Climate Impact Health Coverage Program – Establishment

Committee: Senate Education, Energy, and the Environment Committees

Position: Letter of Information (LOI)

The Maryland Insurance Administration (MIA) appreciates the opportunity to provide information regarding Senate Bill 843.

Senate Bill 843 seeks to establish the Climate Change Adaptation and Mitigation Payment Program in the Department of the Environment to secure payments from certain businesses that extract fossil fuels or refine petroleum products in order to provide a source of revenue for certain climate change adaptive or mitigation infrastructure projects and efforts to address the health impacts of climate change on vulnerable populations. Portions of the funds secured under this program are to be used for disbursements to the Maryland Health Benefit Exchange (MHBE) Fund, and will help to support the Climate Impact Health Coverage Program (the “Program”), which MHBE is required to establish and implement under the bill. The Program is intended to facilitate the enrollment of certain individuals in qualified plans and, based on the availability of funds, provide State premium assistance and cost-sharing reductions to populations with high rates of uninsurance and individuals who are ineligible for federal financial assistance.

The MIA understands that the Program established through Senate Bill 843 has the potential to decrease the uninsured population in the State. The MIA, however, has noted a technical issue regarding a funding source identified in the bill as drafted that can be addressed with a technical amendment.

In 2018, Maryland applied for and was granted a waiver under Section 1332 of the Patient Protection and Affordable Care Act (“ACA”) to implement a state reinsurance fund in an effort to lower premiums and increase enrollment in the State. Under the waiver, Maryland began receiving federal pass-through funds to supplement state funding for the state reinsurance program in 2019. In 2022, this body amended § 31–107 (g)(4)(i) of the Insurance Article to require that federal pass-through funding received through the 1332 waiver only be used for the reinsurance program.

As currently drafted, Senate Bill 843 conflicts with the funding use limitation set forth in § 31–107(g)(4)(i). Senate Bill 843 would enact a new § 31-124(D)(1), which includes “any pass-through funds received from the federal government under a waiver approved under § 1332 of the Affordable Care Act” as a funding source for the Program.

As currently drafted, Section 31-123 of the bill indicates that a 1332 State Innovation Waiver application is to be submitted by July 1, 2024 to allow individuals to enroll in qualified plans offered through the Exchange regardless of immigration status. The MIA notes that legislation had been introduced during the 2022 legislative session seeking to establish a similar program, requiring a 1332 application be submitted. At that time, it was envisioned that Maryland would apply for a separate 1332 waiver to support that proposed program. CMS has since advised that two separate 1332 waivers are not permissible; there can only be one 1332 waiver per state per marketplace. So, in order to establish the Program proposed in Senate Bill 843, the State will be required to amend the existing 1332 waiver to include the Program, rather than submit an application for an additional waiver. If CMS approves the amendment, there would still only be a single 1332 waiver for the Maryland Individual market, with a single source of pass-through funding that the federal government would permit to be used for all programs under the waiver. However, at present, Maryland law only allows the federal pass-through funding to be used for one of those programs: the state reinsurance program.

This conflict can be resolved either by amending § 31–107 to allow federal pass-through funding received through a waiver approved under § 1332 of the ACA to be used for the Program, or any program approved under the waiver or, alternatively, § 31-124(D)(1) be removed from the proposed bill.

Further, the MIA notes two instances of ambiguity in the bill language as drafted that could benefit from additional clarity. First, there is a lack of clear understanding of what requirements could potentially be waived, subject to § 31-123(B). The language as drafted appears overly broad and the MIA is not clear on what “notifications or other requirements” are being referenced. Second, the bill does not define a “qualified resident” under the Program, but instead requires that program eligibility requirements established by the Exchange be provided to the greatest extent possible to populations with high rates of uninsurance and individuals who are ineligible for federal financial assistance. An explicit definition of “qualified resident” would provide necessary clarity as to the population intended to benefit from the Program.

Thank you for the opportunity to provide this letter of information. The MIA is available to provide additional information and assistance to the Committee.