COMMONWEALTH OF VIRGINIA

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November 1, 2021

**TO:** Document Control Center

**FROM:** Jacky Small, Bureau of Insurance

**CASE NAME:** In the matter of Implementation of the Commonwealth Health Reinsurance Program

**CASE NUMBER:** INS-2021-110

Attached are comments submitted to the Commission for consideration.

cc: Commissioner Scott A. White
Deputy Commissioner Julie Fairbanks
Attorney Scottie Fralin
Senior Counsel Bonnie Salzman

## Jacky Small

**From:** do-not-reply@scc.virginia.gov
**Sent:** Monday, November 1, 2021 1:08 PM
**To:** BOI_Comments
**Subject:** Comment for INS-2021-00110
**Attachments:** KP Comments on VA 1332 Waiver Application (final).pdf

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|---|---|
| Case Number | INS-2021-00110 |
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| Comments | Kaiser Permanente offers the attached comments in response to Virginia's Draft 1332 Waiver Application. |

KAISER PERMANENTE®

Mid-Atlantic Permanente Medical Group, P.C.
Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc.

November 1, 2021

Honorable Jehmal Hudson
Honorable Judith Williams Jagdmann
Honorable Angela Navarro
Virginia State Corporation Commission
1300 E. Main Street
Richmond, VA 23219
*Submitting electronically via scc.virginia.gov/casecomments/comment/INS-2021-00110*

RE: Virginia's ACA Section 1332 State Innovation Waiver Application
(Case No. INS-2021-00110)

Dear Commissioners:

Kaiser Permanente offers the following comments in response to Virginia's Draft 1332 Waiver Application. Kaiser Permanente is the largest private integrated health care delivery system in the United States, delivering care to 12.2 million members in eight states and the District of Columbia. Kaiser Permanente of the Mid-Atlantic States provides and coordinates complete health care services for over 756,000 members through 34 medical office buildings in the District of Columbia, Maryland, and Virginia.

Kaiser Permanente appreciates the Bureau of Insurance's commitment to stabilizing Virginia's individual market and supports the Bureau's goals of reducing rates, increasing enrollment, and improving the overall morbidity of the individual market risk pool. Kaiser Permanente has significant experience with helping develop and implement state-based reinsurance programs: three jurisdictions within our service area have operating programs (Colorado, Maryland, and Oregon) and two more are in the process of implementing one (Georgia and Virginia).

The Waiver Application indicates the proposed reinsurance program would reimburse issuers offering comprehensive coverage in the individual market for 70% of the annual claims incurred on a per member basis between $40,000 and $155,000 in plan year 2023. These payment parameters will be finalized in the spring of 2022 after further analyses and stakeholder input and established annually thereafter. With these proposed parameters, the Bureau anticipates an overall 15.6% reduction in premium rates and up to a 2.9% increase in enrollment in 2023. The Waiver Application acknowledges that future premium rate reductions and enrollment increases will vary depending upon program parameters and available funding.

To ensure the greatest number of consumers realize benefits from Virginia's reinsurance program, the Bureau should include the following specific elements in its program parameters and final Waiver Application:

1. Acknowledgment of and preparation for potential significant federal policy changes that could impact the state's reinsurance program.
2. Description of the Bureau's intent to ensure the federal risk adjustment program and the Virginia reinsurance program do not duplicate payments for the same high-risk membership.

We discuss these requests below.

Federal Uncertainty and Potential Impacts to Virginia's Reinsurance Program

State-based reinsurance programs gained popularity starting in 2017 for a few reasons. First, the transitional federal reinsurance program expired at the end of 2016. The following year, 1332 waivers became available offering states flexibility to explore new programs and concepts while providing access to federal funding and without running afoul of the ACA statutory and regulatory framework. During this timeframe, individual market premiums were rising in many geographic areas and states began exploring a range of policies to make individual market coverage more affordable and lower premium rates. Reinsurance programs offered states an opportunity to mitigate the impact of high-cost claims and thereby limit premium increases for consumers amidst the rising rates, and 1332 waivers allowed states to recapture any federal savings through pass-through funding. At the start of 2021, twelve states had fully implemented reinsurance programs, and more states are in the process of implementing or considering the policy.

Since that time, the federal policy landscape has changed significantly. Earlier this year, Congress passed, and the President signed, the American Rescue Plan Act (ARPA) which increased ACA premium subsidies for those already eligible and expanded eligibility by extending subsidies above 400% of FPL – giving many more consumers access to low-cost or even zero-dollar coverage in the individual market. The subsidy expansions currently expire after the 2022 plan year, but Congress is actively considering extending or making permanent these provisions. There remains considerable uncertainty about the future of the federal premium subsidy landscape, something that could affect the overall consumer impact of Virginia's reinsurance program and projected pass-through funding.

The Waiver Application and associated actuarial and economic analyses are based upon current law and regulations. It assumes the federal premium subsidy expansions will terminate after plan year 2022. Oliver Wyman identified the expiration of expanded premium subsidies as a key assumption in the actuarial and economic analyses. Another key assumption is that "there will be no significant legislative changes at either the state or federal level."

Kaiser Permanente understands the need to base the Waiver Application upon current law. However, we consider potential extension of expanded federal premium subsides a critical factor in assessing the impact of the proposed reinsurance program in Virginia. We recommend including specific steps the Bureau will take if these federal policy changes take place, including revising the Waiver Application and updating associated actuarial and economic analyses.

We also encourage the Bureau to continue assessing how federal or state policy changes might affect the program and whether other policies could serve Virginia residents. For example, Kaiser Family Foundation estimates that over 117,000 uninsured Virginia residents are currently eligible for free coverage after passage of ARPA.[1] If the subsidy expansions are extended or made permanent, we encourage the state to invest in targeted education and outreach efforts, helping uninsured individuals assess their eligibility for and enroll in subsidized individual market coverage. In addition, the end of the public health emergency will bring about Medicaid redeterminations in all fifty states. As individuals are likely to transition from Medicaid to other job-based or exchange-based coverage, this outreach and education effort is even more critical to keep people covered. The state might also consider policy changes such as state-based premium or cost-sharing subsidies, policies that will be easier to implement once the state transitions to a state-based marketplace in 2024. We also encourage Virginia to assess potential policy solutions aimed at stabilizing the fully insured small group market. This market has received far less attention from federal and state policymakers but is critical for many small business owners.

Federal Risk Adjustment and Virginia Reinsurance Overlap

The federal risk adjustment program compensates carriers for high-risk members by transferring money among carriers based on their enrollment of individuals with certain high-cost diagnoses. CMS has long recognized that the scale of such transfers plays a crucial role in issuer decisions to participate in the individual market.

Actuarial experts recognize reinsurance-level adjustments for risk adjustment as sound policy. Milliman notes that "the current federal risk adjustment methodology does not account for payments from a state-based reinsurance program and can result in double compensation for high-risk members, both from the reinsurance program and from risk adjustment. This finding may be important to many other states considering reinsurance-like proposals under Section 1332 to help stabilize their markets. Specifically, if appropriate changes to risk-adjustment are not made, a reinsurance program could lead to pricing inefficiencies and distortions that negatively impact the market and could work against the goals of the reinsurance program overall."[2]

The enabling legislation for Virginia's reinsurance program requires that program transfers account for payments made under the federal risk adjustment program. The Bureau has acknowledged the overlap issue and the statutory requirement to account for it and we understand the Bureau is assessing options to address the overlap. However, aside from attaching the enabling legislation, the Waiver Application does not include a discussion of this issue or an analysis of the potential impact of double compensation for the same high-risk claims.

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[1] Kaiser Family Foundation, A Closer Look at the Uninsured Marketplace Eligible Population Following the American Rescue Plan Act (May 2021), https://www.kff.org/private-insurance/issue-brief/a-closer-look-at-the-uninsured-marketplace-eligible-population-following-the-american-rescue-plan-act/.
[2] Milliman, Paring Risk Adjustment to Support State 1332 Waiver Activities (Aug. 2017), http://www.milliman.com/uploadedFiles/insight/2017/risk-adjustment-state-1332-waiver-activities.pdf. *See also* American Academy of Actuaries, How Changes to Health Insurance Market Rules Would Affect Risk Adjustment (May 2017), http://www.actuary.org/content/how-changes-health-insurance-market-rules-would-affect-risk-adjustment.

We recommend the Bureau request actuarial analyses to determine the extent of the overlap and continue reviewing methodologies to correct for the overlap. This analysis will help inform 2023 individual market rates, as issuers will need to set rates that reflect expected reinsurance recoveries after the correction of the overlap. Failure to address this issue in the first year of the program not only creates equity issues among carriers but could also cause disruption to consumers in the form of abrupt premium changes in future years because of a delay in addressing the overlap.

We appreciate your attention to this request and are happy to provide additional information. Please feel free to contact Christopher West at Christopher.E.West@kp.org or (804) 525-8105 with questions.

Sincerely,

Ruth E. Williams-Brinkley

Ruth E. Williams-Brinkley, FACHE
President, Kaiser Foundation Health Plan of Mid-Atlantic States, Inc.