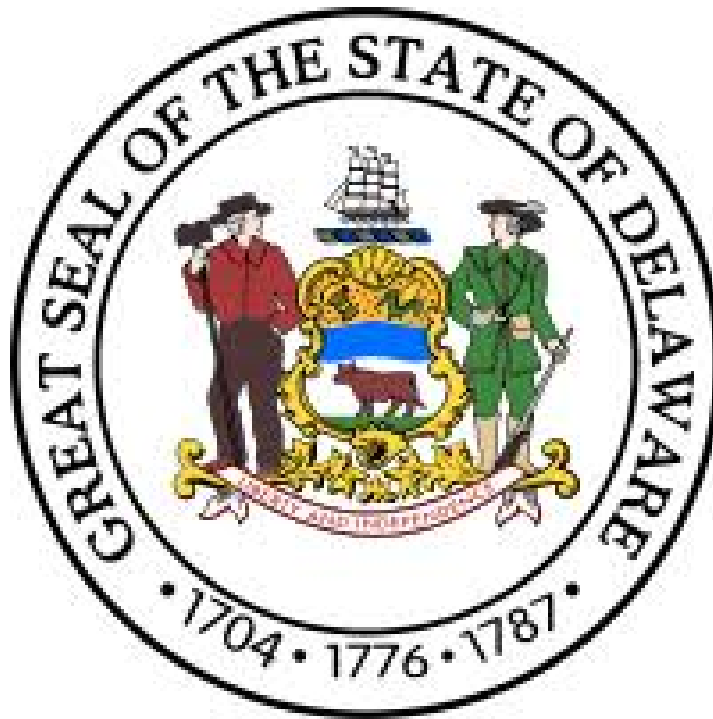


**STATE OF DELAWARE**  
**COMPREHENSIVE DESCRIPTION:**  
**STATE INNOVATION WAIVER APPLICATION**



DELAWARE DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DR. KARA ODOM WALKER, SECRETARY  
&  
DELAWARE DEPARTMENT OF INSURANCE  
TRINIDAD NAVARRO, INSURANCE  
COMMISSIONER

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## **I. SUMMARY**

### **A. WAIVER REQUEST**

Dr. Kara Odom Walker, Secretary of the Delaware Department of Health and Social Services, on behalf of the State of Delaware, will submit an application to the Centers for Medicare and Medicaid Services (“CMS”), a division of the United States Department of Health and Human Services (“HHS”), and to the United States Department of the Treasury, for a waiver of certain provisions of the Patient Protection and Affordable Care Act, Public Law 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111-152, together referred to as the Affordable Care Act (“ACA”), as authorized by section 1332 of that Act.

Delaware’s 1332 waiver application will, if approved, be effective for the 2020 plan year, and will seek the maximum approval of five years under section 1332. Delaware’s 1332 waiver will seek approval to waive section 1312(c)(1) of the ACA for the purpose of establishing a state-based, and state-administered reinsurance program. Delaware’s 1332 waiver will not seek to waive any other sections of the ACA.

Delaware’s 1332 waiver, if approved, would establish a reinsurance program that would significantly lower premiums in the Individual market and reduce the payment of premium tax credits (“PTCs”) by the federal government.

### **B. BACKGROUND & GOAL OF REINSURANCE PROGRAM**

As detailed in Section III, Delaware’s Individual market for health insurance has experienced deterioration since the 2014 plan year. Delaware has seen the number of health insurance issuers offering coverage in its Individual market decline, while insurance rates in the individual market have risen significantly in recent years. As the number of issuers offering coverage in Delaware’s Individual market have declined to just one and premium rates have continued to increase, the number of individuals enrolled in the Individual market has declined rapidly since 2015.

Delaware believes that a sustainable, affordable Individual market for health insurance is important. After studying the State’s market, population, and morbidity, Delaware believes that an effective mechanism to help stabilize its Individual market by reducing rates, increasing enrollment, and improving the morbidity of the single risk pool is through the use of a state-based reinsurance program. The Delaware reinsurance program is modeled largely on the Transitional Reinsurance Program that operated in the Individual market from 2014 through 2016 under section 1341 of the ACA and will utilize an attachment-point model of reinsurance, financed by a premium assessment on health insurance issuers. Stabilizing the Individual market through risk-spreading among the larger statewide health insurance market represents appropriate public policy.

Delaware’s 1332 waiver will propose a reinsurance program that is expected to lower rates in the Individual ACA market by 20% for the 2020 plan year, improve morbidity in the risk pool by as much as 0.6%, and increase enrollment in the Individual ACA market by as much as 3.2%. These estimates are relative to actuarial projections of a 2020 plan year without a reinsurance program in effect.

## **C. COMPLIANCE WITH ACA SECTION 1332**

### **1. GUARDRAILS**

As detailed more fully in Section II, Delaware's 1332 waiver application, if approved and implemented, would abide by the four guardrails<sup>1</sup> imposed under section 1332 of the ACA. Delaware's 1332 waiver proposal does not seek to alter or affect the comprehensiveness of coverage in Delaware's market for health insurance. Additionally, the 1332 waiver proposal will not result in health insurance being less affordable than it has already become; rather, it will reduce rates in the Individual market. Regarding the scope of coverage guardrail, Delaware's 1332 waiver is expected to increase enrollment in the Individual market. Finally, Delaware's 1332 waiver will not result in increased spending, administrative or other expenses to the federal government. Delaware's 1332 waiver will request pass-through funding in the amount of reductions in PTC payments made by Treasury, which the federal government would have otherwise been statutorily obligated to make.

### **2. PASS-THROUGH FUNDING**

Delaware's 1332 waiver proposal will request that Treasury "pass-through" to Delaware's reinsurance program the cost savings from the reduction of federal outlays of PTCs resulting from the reduction in rates in the Individual market due to the reinsurance program. Section 1332(a)(3) of the ACA authorizes pass-through funding in 1332 waiver applications.

### **3. PUBLIC NOTICE & COMMENT**

Delaware is releasing this comprehensive description of its 1332 waiver proposal for public comment, in addition to the lengthy discussion that has occurred and continues to occur in the legislative process. Additionally, Delaware will hold two public hearings in separate places within a 30-day period, commencing on Thursday, May 30, and ending on Friday, June 28, 2019. During that same period, Delaware will accept comments from the public regarding the 1332 waiver proposal.

Delaware's Department of Insurance has created a webpage, easily accessible from its homepage at <https://insurance.delaware.gov/>, which contains this comprehensive description, a draft of the final 1332 waiver proposal (when available), links to enabling legislation for the 1332 waiver application and for the establishment of a reinsurance program, a mechanism for electronically submitting comment, notice of public hearings, and other information intended to give the public the ability to understand Delaware's 1332 waiver application.

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<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2018-10-24/pdf/2018-23182.pdf>

## II. COMPLIANCE WITH SECTION 1332 GUARDRAILS

The ACA contains provisions that encourage states to innovate regarding health insurance coverage and avoid situations where a one-size-fits-all approach implemented through federal regulation may have negative effects in specific states. The provision at the center of this 1332 waiver proposal is Section 1332 of the ACA, which allows states to modify or waive certain provisions of the ACA. However, there are certain “guardrails” in that authorization which place limitations how 1332 waivers can be used by states. The guardrails outlined in Section 1332 of the ACA are described in more detail in guidance published on October 24, 2018. In general, the guardrails are intended to ensure that comprehensive, affordable healthcare coverage continues to be made available in a state to at least as many individuals as would have access absent a waiver, while not increasing the federal deficit.

Although some flexibility is provided to states when pursuing waivers under section 1332 of the ACA, there are specific market reforms from Title I of the ACA that cannot be waived by a state. Those market reforms include:

- Guarantee issue (the requirement that issuers offering ACA-compliant policies in a state must offer coverage to all eligible applicants, with few exceptions)
- Prohibition on pre-existing conditions exclusions
- Prohibition on lifetime and annual dollar limits for policies
- Prohibition on health underwriting or adjusting premium due to health status
- The maximum age rating ratio of 3:1
- Requirement that coverage be provided to adult dependents up to age 26

Additionally, the section 1332 waiver cannot alter provisions of law or operations of the state’s Medicaid program.

### SECTION 1332 GUARDRAILS

#### *Comprehensiveness of Coverage*

The first of the four guardrails require that any 1332 waiver must ensure access to coverage provided in the market after the implementation of the waiver that is “at least as comprehensive” in covered benefits as would be available without the implementation of a 1332 waiver.

Delaware’s 1332 waiver does not in any way seek to alter the requirements of coverage under state benefit mandates or under the ACA’s required coverages, including the essential health benefits requirement under section 2707 of the Public Health Service Act.

#### *Affordability of Coverage*

A 1332 waiver must provide access to “coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable” for the state’s residents as would be available absent the implementation of the 1332 waiver. Affordability is measured by comparing an individual’s net out-of-pocket spending, including premium contributions, cost-sharing, and spending on non-covered services.

Delaware’s 1332 waiver would not require or encourage issuers to alter cost-sharing designs or network coverage. In addition, by establishing a reinsurance program to lower rates, Delaware’s

1332 waiver would reduce premium contributions made by a number of individuals (e.g., those individuals who do not receive PTCs) and reduce the overall cost of health insurance in the Individual market. Overall, if approved, this 1332 waiver is expected to make coverage more affordable in the Individual market.

### *Scope of Coverage*

Section 1332 requires that states must provide coverage to “at least a comparable number of the state’s residents” as would have been covered without the waiver.

Delaware’s 1332 waiver is expected to increase the number of enrollees in the Individual market due to the reduction in rates resulting from the reinsurance program. Actuarial analyses and projections estimate that the number of Individual market enrollees would increase by about 3.2% over baseline assumptions for the 2020 plan year.

### *Deficit Neutrality*

Section 1332 requires that a waiver must not increase the federal deficit in each year of the waiver, and over a 10-year budget period. All changes in federal revenues and outlays resulting from an approved 1332 waiver must be considered.

Delaware’s 1332 waiver, if implemented, would not increase either the federal deficit or federal revenues or outlays. The reinsurance program proposed in Delaware’s 1332 waiver would seek pass-through funding that is equal to, but not greater than, the amount of money in PTCs that Treasury would otherwise pay without a reinsurance program under a 1332 waiver. In other words, federal expenditures would not be expected to change as a result of the waiver.

## **III. RECENT HISTORY AND CURRENT STATUS OF DELEWARE’S HEALTH INSURANCE MARKET**

Delaware’s Individual health insurance market has experienced significant changes in recent years since the ACA was implemented. As shown in Table 1, in the year prior to the implementation of the ACA (i.e., 2013) health insurance issuers in the Individual market, in aggregate, were able to achieve an underwriting gain. However, in the first three years following the implementation of the ACA, issuers doing business in the Individual market began realizing large underwriting losses, with the most significant of those losses occurring in 2015 and 2016. Following those results and, in part, likely due to similar results nationwide, only one issuer remained in Delaware’s Individual market to offer coverage in 2018.

**Table 1 – Individual Market Underwriting Gain/Loss**

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Premium	\$66,216,000	\$117,598,000	\$165,322,000	\$192,800,000	\$200,270,000
Gain/(Loss)	\$2,050,000	(\$1,660,000)	(\$31,340,000)	(\$23,050,000)	\$4,910,000
G/L% of Prem	3.1%	(1.4%)	(19.0%)	(12.0%)	2.5%

Sources: CMS MLR Reported Data (2013 through 2017)

Membership in Delaware’s Individual market increased significantly following implementation of the major provisions of the ACA in 2014 but has since experienced a significant decline in recent years. The high points of enrollment in 2015 and 2016 preceded a large average rate increase

which took effect in the 2017 plan year. Rate increases issued in 2018 caused further enrollment deterioration.

As shown in Table 2, we estimate that the average premium per member per month (PMPM) in Delaware’s Individual market has more than doubled over the time period from 2014 to 2018, from \$336 to \$763. Meanwhile, total membership in Delaware’s Individual market has nearly dropped to the level which existed prior to the ACA.

**Table 2 –Individual Market Member Months and Average Premium PMPM**

	2013	2014	2015	2016	2017	2018
Member Months	242,000	350,000	426,000	420,000	360,000	286,000
Premium PMPM	\$274	\$336	\$388	\$459	\$556	\$763

Sources: CMS MLR Reported Data (2013 through 2017); SHCEs (2018)

Without market stabilization efforts aimed at reducing rates, increasing enrollment, and maintaining downward pressure on rates in the coming years, Delaware’s Individual market faces the risk of continued loss of enrollment and the potential of becoming a market in which the only individuals who can afford to purchase coverage are those who are subsidized by the federal government. In the worst case, Delaware could face a scenario where the Individual market becomes so small and so unstable that no insurer would be willing to offer coverage. As a result, Delaware believes that a reinsurance program is the most cost-effective mechanism to immediately push rates downward, encourage enrollees to maintain coverage, and to attract more enrollees into the market for the 2020 plan year.

#### IV. DESCRIPTION OF 1332 WAIVER PROPOSAL

Delaware will submit a 1332 waiver application that seeks to implement a state-based reinsurance program to stabilize the Individual market. Delaware’s 1332 waiver application will seek approval to waive ACA section 1312(c)(1); Delaware will not seek approval to waive any other provisions of law. The waiver application submitted by Delaware, if approved and implemented, would take effect for the 2020 plan year, and approval would remain in effect for five years.

##### *Delaware’s Proposed Reinsurance Program*

Senate Concurrent Resolution 70 (SCR 70) was passed on June 28, 2018, and authorizes the State’s 1332 waiver application. The establishment of a state-based reinsurance program and the securement of a funding source for that reinsurance program is being established in the Delaware Health Insurance Individual Market Stabilization Reinsurance Program Act.

##### *Reinsurance Program Structure*

The Delaware Health Care Commission (DHCC) was previously created by 16 *Del. C.* § 9902. Per the Delaware Health Insurance Individual Market Stabilization Reinsurance Program Act, the DHCC will be charged with the following responsibilities associated with the operation of the proposed reinsurance program.

- 1) To provide reinsurance to issuers that offer individual health benefit plans<sup>2</sup> in the State
- 2) Establish procedures for the handling and accounting of program assets and monies, as

<sup>2</sup> Any policy offered in the Delaware’s Individual market that is subject to the single risk pool requirements of § 1312(c)(1) of the Affordable Care Act

well as for an annual fiscal reporting to the Commission, Insurance Commissioner and General Assembly

- 3) Annually establish procedures and parameters for reinsuring risks, including all of the following: an attachment point, a coinsurance rate, and a coinsurance cap
- 4) Establishing procedures and standards for issuers to submit claims to be reinsured under the program
- 5) Establishing procedures for selecting an administering contractor and setting forth the power and duties of the administering contractor
- 6) Establishing procedures for quarterly reporting or annual reporting, or both, of data under the § 1332 waiver to demonstrate that the waiver remains in compliance with the scope of coverage, affordability, comprehensiveness and deficit requirements.
- 7) Establishing procedures for providing each year the actual Second Lowest Cost Silver Plan premium under the Affordable Health Care Act's [42 U.S.C. § 18001 *et seq.*] § 1332 waiver and an estimate of the premium as it would have been without the waiver.
- 8) Providing for any additional matters necessary for the implementation and administration of the reinsurance program

### *Reinsurance Program Financing & Target Reduction in Rates*

The Delaware Health Insurance Market Stabilization Reinsurance Program Act would authorize the Insurance Commissioner to assess issuers<sup>3</sup> to finance the proposed reinsurance program. The assessment shall be equally applied to all issuers based upon their premium tax liability, or the amount of the issuer's premium tax exemption value for the previous calendar year. The assessment is proposed to be 2.75% annually in years that the Health Insurance Providers Fee (i.e., as defined under 9010 of the Affordable Care Act) is waived, and 1% of premium annually in years that the Health Insurance Providers Fee will be assessed. The purpose of the assessment is to fully finance the State's liability related to the proposed reinsurance program. The State of Delaware may not hold more than 5 years of operating and administrative funds to cover the expected cost of the reinsurance program. In the event collections exceed that amount, the state must notify the issuers that the following year's assessment will be waived.

Delaware's 1332 waiver application will target a 20% rate reduction for the 2020 plan year; the State's anticipated net cost to fund the 20% rate reduction will be the primary basis for the calculation of the assessment. Actuarial modeling predicts that Delaware will need to secure \$7.4 million in financing to secure the corresponding \$36.4 million in federal pass-through funding to achieve a 20% rate reduction for the 2020 plan year. The total reinsurance pool for the 2020 plan year would be \$43.8million. The \$7.4 million in state-secured financing would be the amount of money that, when added to any amount required to finance the administrative costs of the reinsurance program, would represent the total amount for which issuers would be assessed.

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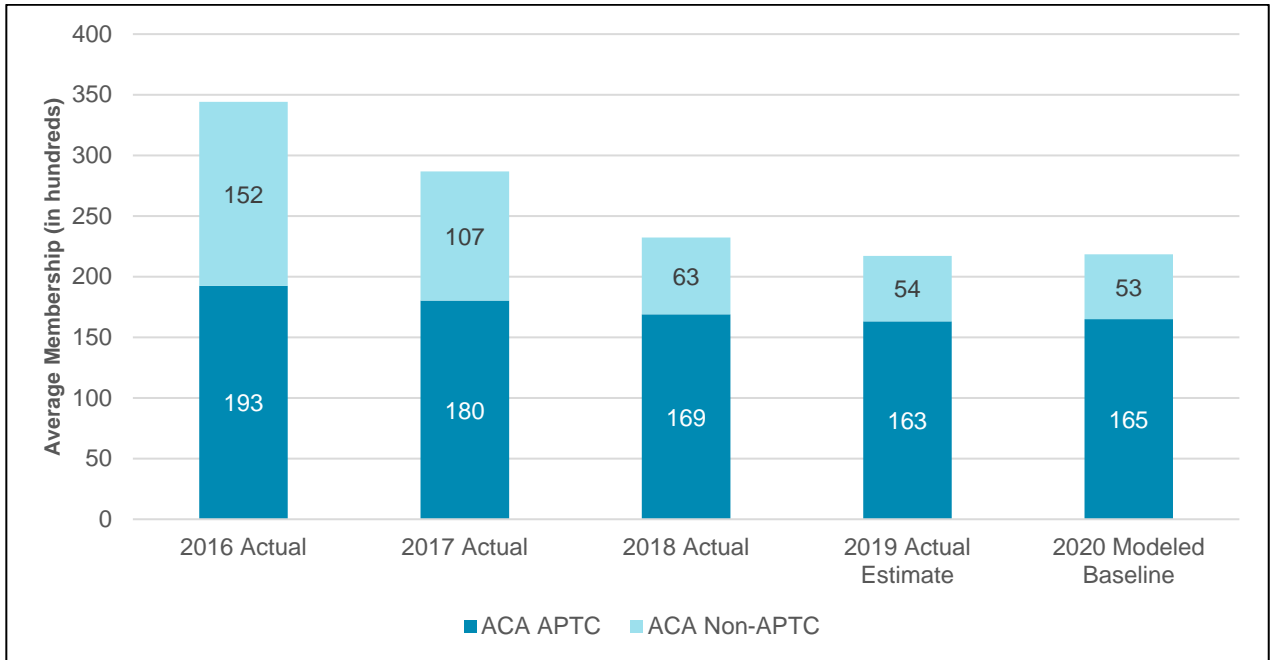
<sup>3</sup> Any entity that provides health insurance in the State of Delaware. Issuer includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to Delaware state insurance regulation.



## V. ACTUARIAL ANALYSES TO SUPPORT WAIVER PROPOSAL

### 1. Preliminary Actuarial Modeling Results

**Table 3 – Individual ACA Market Membership (2016 to 2020)**



The 2020 Modeled Baseline shown in Table 3 reflects projected enrollment levels in 2020, split between those individuals receiving advance premium tax credits (APTCs) and those individuals who do not receive APTCs. As shown, absent a 1332 waiver and corresponding reinsurance program, total enrollment volumes in Delaware’s Individual market are expected to be approximately level from 2019 and 2020. Key assumptions being incorporated into the 2020 projection are that the individual mandate penalty will remain equal to \$0 and that issuer pricing in 2020 will incorporate the following items: 9.5% premium/claims trend, a reduction in the exchange user fee for 2020 from 3.5% to 3.0%, and the inclusion of the Health Insurance Providers Fee (approximately 2.9% of premium).

Additional key assumptions which underlie the 2020 Modeled Baseline projection shown above include the following: Cost sharing reduction (CSR) subsidies will continue to be unfunded by the federal government and issuers will continue to load premiums for their on-Exchange silver plans by an amount equal to the lost CSR payments from the federal government, issuer plan and network offerings will be similar to those available to consumers in 2019, issuer pricing assumptions will be similar to those used in 2019, there will be no significant issuer entries or exits, and there will be no additional significant legislative changes at either the state or federal level.

**Table 4 – 2020 Individual ACA Market Membership**

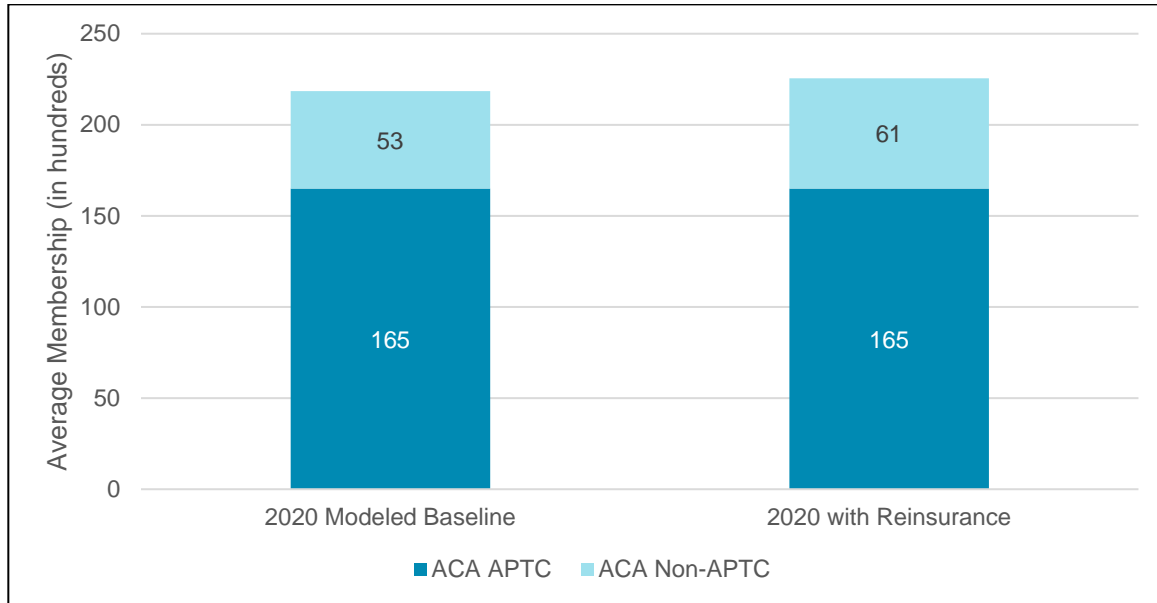


Table 4 above demonstrates how enrollment in Delaware’s Individual market would be expected to change assuming a reinsurance program funding 20% of projected issuer expenses (i.e., paid claims and certain non-benefit expenses), and resulting in a total reduction to premium rates equal to 20.6%, were to be implemented starting in 2020. As shown, the impact of the reinsurance program on enrollees receiving APTCs in 2020 is expected to be minimal as the net premium rates paid by those enrollees (i.e., net of APTCs) are, on average, mostly insulated from changes in gross premium rates. On the other hand, the volume of enrollees who do not receive APTCs is expected to increase, driven primarily by uninsured individuals expected to enter the individual market as a result of lower rates.

We note that, in the reinsurance scenario shown, it is being assumed that issuers will reduce their 2020 premium rates from the levels assumed under the 2020 Modeled Baseline by the percentage of issuer costs expected to be funded by the reinsurance program (i.e. 20.0%), plus an additional amount equal to 0.6% to reflect an expected improvement in the average morbidity<sup>4</sup> of the individual ACA market, for a total change in premium rates equal to -20.6%<sup>5</sup>.

<sup>4</sup> On average, the additional individuals who enroll under the reinsurance scenario would be expected to have lower health risks than those individuals included in the 2020 Modeled Baseline.

<sup>5</sup> Relative to the 2019 Modeled Baseline premium rates;  $1 - [(1 - 20.0\%) \times (1 - 0.6\%)] = 20.6\%$

**Table 5 – Net Cost of Reinsurance Program to the State of Delaware**

(in millions)	2020 Modeled Baseline	2020 with Reinsurance	
<b>Reinsurance Pool Cost</b>	-	\$43.8	A
<b>Federal PTC Spending</b>	\$160.4	\$122.8	
<b>Gross Pass-Through Savings</b>	-	\$37.6	B
<b>Federal Revenue From Exchange User Fees</b>	\$6.3	\$5.1	
<b>Change in Exchange User Fees</b>	-	-\$1.2	C
<b>Net Cost to the State of Delaware</b>	-	\$7.4	= A – (B+C)

As shown in Table 5 above, the total projected cost (i.e., “Reinsurance Pool Cost”) of a reinsurance program that would reimburse approximately 20% of issuer expenses in Delaware’s Individual market in 2020 is approximately \$43.8 million.<sup>6</sup> However, through the submission and approval of a 1332 waiver, much of the funding needed for the reinsurance program would be expected to be received in the form of federal pass-through payments, resulting in a net cost to Delaware which is significantly lower than \$43.8 million.

Since the proposed reinsurance program is expected to result in a significant decrease in gross premium rates (i.e., premium rates prior to the application of APTCs) for all individuals enrolled in Individual plans, federal spending on PTCs would be expected to decrease by a significant amount as well. Overall, we are projecting that federal PTC spending will decrease by approximately \$37.6 million between the 2020 Modeled Baseline and Reinsurance scenarios.

The federal PTC savings would be expected to be somewhat offset by a reduction in federal revenue generated from Exchange User Fees. This is because, as Individual Exchange premium rates are lowered through the reinsurance program, federal revenue generated by the 3.0% premium assessment on coverage issued through the federally-facilitated marketplace would be expected to decrease as well. The reduction in Exchange User Fees between the 2020 Modeled Baseline and Reinsurance scenarios is expected to equal approximately \$1.2 million, resulting in expected net federal pass-through payments to Delaware equal to approximately \$36.4 million (i.e., \$37.6M – \$1.2M).

<sup>6</sup> Excludes costs associated with the implementation and ongoing administration of the reinsurance program

Based on the above, the expected net liability to Delaware in order to fund a reinsurance program that reimburses approximately 20% of issuer expenses in Delaware's Individual market in 2020 is expected to be approximately \$7.4 million (i.e., \$43.8M – \$36.4M).

## VI. IMPLEMENTATION PLAN WITH TIMELINE

Delaware's 1332 waiver application is admittedly subject to severe time constraints in order to effectuate the implementation of a reinsurance program for the 2020 plan year. Delaware will seek to achieve the following time line in order to effectuate a reinsurance program for the 2020 plan year:

Pending: The Delaware Health Insurance Individual Market Stabilization Reinsurance Program Act is filed.

05/30/19: Public Comment Period begins (30 days total)

06/11/19: First Public Hearing held.

06/14/19: Second Public Hearing held.

Upon Governor's Signature: The Delaware Health Insurance Individual Market Stabilization Reinsurance Program Act is enacted.

06/29/19: Public Comment Period ends.

07/08/19: Delaware's 1332 waiver application is submitted to the federal government.

07/18/19: Federal government determines waiver application is complete

08/22/19: CMS approves Delaware's 1332 waiver.

01/01/20: Delaware's reinsurance program under a 1332 waiver commences operation, compliant with both state and federal law and regulations.

04/01/20: Federal government funds pass-through payments to DHCC

## VII. OTHER REQUIREMENTS

### *Administrative Burden*

Delaware's 1332 waiver is expected to cause minimal administrative burden and expense to the state and federal governments. The waiver will cause no additional administrative burden to employers and individual consumers because the reinsurance program proposed by Delaware in its 1332 waiver does not relate to the administrative functions or requirements typically undertaken by employers or individuals. The administrative burden to health insurance issuers associated with submitting limited data to Delaware will be minimal; however, most issuers will incur a cost for the financing of the reinsurance program under Delaware's 1332 waiver in the form of the previously described premium assessment.

The State of Delaware will have the resources to conduct the administrative tasks required for a reinsurance program under a 1332 waiver:

- Administration of the reinsurance program;
- Collection and application for pass-through funding;
- Monitoring of compliance with state and federal law;
- Collection and analyses of data related to the 1332 waiver;
- Performing reviews and implementation of the waiver;
- Submitting any annual, quarterly, or other required reports to the Commissioner, CMS, and Treasury

The 1332 waiver will require the federal government to perform the following administrative tasks, which are insignificant in comparison to duties currently performed by the federal government:

- Review documented complaints, if any, related to the 1332 waiver;
- Review state reporting;
- Evaluate the state's 1332 waiver and reinsurance program;
- Calculate and facilitate the transfer of pass-through funds;
- Allow the use of the EDGE server to calculate reinsurance payments.

## VIII. COMMENT PERIOD

Delaware's public comment period for its 1332 waiver application begins on Thursday, May 30, 2019, and ends Saturday, June 29, 2019. Comments can be sent to the Department of Insurance through an e-mail address at [1332waiver@delaware.gov](mailto:1332waiver@delaware.gov) or by mail to:

Delaware Department of Insurance  
 Attn: Leslie Ledogar  
 841 Silver Lake Blvd  
 Dover, DE 19904

The two public hearings will be held:

Tuesday, June 11, 2019 at 9:00 am  
 Delaware Department  
 of Insurance  
 841 Silver Lake Blvd.  
 Dover, DE 19904

Friday, Jun 14, 2019 at 1:00 pm  
 Delaware Department  
 of Insurance  
 1007 Orange Street, Suite 1010  
 Wilmington, DE 19801