State of New Jersey
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF INSURANCE
PO BOX 325
TRENTON, NJ 08625-0325
TEL (609) 292-0844
FAX (609) 292-3144

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

MARLENE CARIDE
Commissioner

January 8, 2019

Randy Pate, Director
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

Dear Mr. Pate,

As you are aware, the Department is in receipt of your November 30, 2018 letter providing the estimated pass through funding for New Jersey and the Department has had subsequent discussions with your team regarding our questions and concerns about the process the Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of the Treasury (Treasury) used to calculate the funding estimate. New Jersey's waiver application projected that the State of New Jersey (the State) could expect to receive a total pass-through funding amount equal to $218.0 million for calendar year 2019. The November 30, 2018 letter estimates that the State will receive total pass-through funding equal to $180.2 million for the calendar year 2019. This difference, along with discrepancies in estimates provided to several other states with approved waivers, has raised questions about the process of determining pass-through funding, which notwithstanding our discussions, remain unanswered.

As required by federal law, the actuarial analysis attached to the State's approved waiver application contained a detailed explanation of the data and methodology used in the State's calculation of pass-through funding. That analysis was informed by a data call to health insurance carriers offering coverage in New Jersey's individual market in 2018. The data included premium, claims, and enrollment information from January 2015 through March 2018. The carrier data was augmented with information from a number of other sources, including but not limited to Marketplace enrollment reports, carrier financial statements, Marketplace premiums, among many others. The actuarial model and methodology used to estimate the State's pass-through funding is articulated in great detail in the actuarial analysis submitted by the State and attached to the approved waiver application.

New Jersey submitted its waiver application on July 2, 2018, received a determination of completeness on July 13, 2018 and approval of its application on August 16, 2018. To our surprise, it appears that Treasury used a significantly different process, including different data sources, than the State's actuaries in estimating the pass-through funding. Treasury did not raise any concerns with the data, model, or estimates contained in the State's actuarial analysis. It was not until after our receipt of the November 30, 2018 letter that the Office of Tax Analysis in Treasury provided any information to the State on the method of calculating the pass-through funding. Since that time, the State has made every effort to understand Treasury's method and reconcile the difference between Treasury's pass-through estimate and the estimate in the State's application, yet significant questions remain unanswered.

The State's specific questions include:

1. a. The new information provided by the Office of Tax Analysis[1] included reference to an adjustment based on the ratio of total Premium Tax Credit (PTC) subsidy after reconciliation to Advanced Premium Tax Credit (APTC). What was the ratio of total Premium Tax Credit (PTC) subsidy after reconciliation to Advanced Premium Tax Credit (APTC) which was applied in the development of New Jersey's estimated pass-through funding, and what is the source for that ratio?

b. Why is there an adjustment applied given that it would appear the difference in APTCs with and without the waiver should essentially be equal to the difference in PTCs with and without the waiver?

2. Specifically for New Jersey, what is the average annual volume of APTC enrollment that it estimated for 2018 as well as the average annual volume of APTC enrollment that it assumed for 2019? What is the change in APTC enrollment that is projected between 2018 and 2019?

3. Based on our conversations, it is our understanding that the latest state-specific 2018 enrollment data that is available to Treasury is used in the model. Is this accurate? Once they are available, will final 2019 Open Enrollment figures factor into the model?

4. Can you explain your assumptions in the model related to the impact of the repeal of the federal individual mandate penalty, particularly as it relates to the State's individual mandate law? How did this differ from the assumptions used for pass-through calculations in states that do not have a State individual mandate?

5. To the extent an average Allowable Rating Factor (ARF) was assumed for the APTC-eligible enrollment in the development of the estimate, can you please provide what the average assumed ARF was and an overview of how that figure was developed?

---

[1] Method for Calculation of Section 1332 Waiver Premium Tax Credit Pass-through Amounts, Office of Tax Analysis

6. Is the state's actuarial analysis submitted along with the waiver application used to inform Treasury's pass-through analysis in any way?

7. Were there any methodological changes in how Treasury calculated pass-through funding for reinsurance programs between calendar year 2018 and calendar year 2019?

As you know, State Innovation Waivers under Section 1332 of the Affordable Care Act allow states to pursue innovative strategies to provide high quality, affordable health care coverage while retaining the Affordable Care Act's basic protections. If the State Innovation Waiver process is to accomplish the goals of allowing states to pursue innovative strategies, it is imperative that the process be as transparent and as predictable as possible. This is critical, not only to allow for appropriate planning by states and to minimize budgetary risk, but also so that the public truly has a meaningful opportunity to comment and participate in the waiver process. One of the requirements of the waiver application process is that the state provide public notice and a comment period sufficient to ensure a meaningful level of public input on the application. While the State fulfilled this requirement by providing the public with the opportunity to comment, making public presentations on the draft application, and releasing a detailed actuarial analysis, the meaningfulness of that public input becomes severely diminished when the federal pass-through calculation process is unpredictable and opaque.

We urge Treasury to provide increased transparency and timely information relating to the pass-through estimates to states. While the State's reinsurance program has already benefitted the residents of New Jersey through lower premiums, providing certainty regarding the funding is critical and necessary to states utilizing the program and can only be achieved through increased transparency. We look forward to working with you to better understand and improve this process.

Thank you for your consideration.

Respectfully,

MCaride

Marlene Caride
Commissioner