



# AMERICAN BENEFITS COUNCIL

May 14, 2018

*Submitted electronically to 1332waiver@ldi.la.gov*

Louisiana Department of Insurance  
Attn: State Innovation Waiver  
P.O. Box 94214  
Baton Rouge, LA 70804-9214

**Re: Louisiana – State Innovation Waiver Application**

Dear Commissioner Donelon:

I write on behalf of the American Benefits Council (Council) to provide comment with respect to Louisiana’s application to the Centers for Medicare and Medicaid Services (“CMS”) and to the U.S. Department of the Treasury (Departments), for a waiver of certain provisions of the Affordable Care Act (ACA) as authorized by Section 1332 of that Act. Louisiana’s 1332 waiver application seeks approval to waive Section 1312(c)(1) of the ACA for the purpose of establishing a state-based and state-administered reinsurance program. The reinsurance program is intended to lower premium rates in the individual insurance market and would be established under proposed state legislation.

As discussed below, the Council has serious concerns regarding imposing fees on covered lives in employer-sponsored group health plans as a means of financing reinsurance for the individual insurance market. The Council strongly urges that any fee assessments intended to finance a reinsurance program for the individual insurance market not apply directly or indirectly to covered lives in employer-sponsored group health plans.

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to health and retirement plans that cover more than 100 million Americans.

The Council's large employer members sponsor health benefits coverage for employees and their families in Louisiana and across the country. They are multi-state and national employers who sponsor group health plans governed by the Employee Retirement and Income Security Act of 1974 (ERISA). The health benefits under these plans are provided using group insurance coverage purchased by the employer or through self-insured arrangements. Our employer members typically self-insure and contract with third-party administrators (TPAs) to provide services needed to administer their group health plans.

The specifics of the waiver application to establish a state-based reinsurance program are set out in a document entitled "State of Louisiana Comprehensive Description: State Innovation Waiver Application" (Louisiana Waiver Application). As described in the document, the Louisiana reinsurance program would be modeled largely on the Transitional Reinsurance Program (TRP) that operated from 2014-2016 under Section 1341 of the ACA and was financed by a per-covered life fee on insured and self-insured lives.

The Waiver Application proposes to finance a state reinsurance program by imposing a fee assessment on all insurers, TPAs and multiple employer welfare arrangements transacting business in Louisiana. According to the waiver application, the "predicted" per member/per month fee assessment for 2019 would be approximately \$1.09. If approved, the Louisiana Waiver Application would take effect for the 2019 plan year and would remain in effect for five years.

The Council has serious concerns regarding proposed fee assessments that would be imposed directly or indirectly on employer-sponsored group health plans. By imposing fee assessments on TPAs, the waiver application will increase costs of self-insured health benefits coverage, since such fees would typically be passed on to the employer group health plan in the form of higher administrative costs. Plan participants could also be affected through increased out of pocket costs, including higher deductibles, co-pays or co-insurance. This would lead to higher health benefits costs for Louisiana employers, employees and their families.

We are concerned that the Waiver Application does not adequately evaluate the impact of the proposed assessments on employer-sponsored group health plans. As discussed in the Waiver Application, there are certain "guardrails" outlined in Section 1332 that limit how waivers can be used by states. The guardrails are intended to ensure that comprehensive, affordable coverage continues to be provided to at least as many individuals absent a waiver.

As explained in the Louisiana Waiver Application, the Departments have provided guidance for reviewing 1332 waiver applications against these guardrails, and consistent with this guidance, "... the departments will consider the impact of the

proposed program on *all state residents*, as well as its effects across different residents, including Medicaid and CHIP.” (Emphasis added).

The Waiver Application does not assess the impact on sponsors or participants of self-insured group health plans other than to say the “amount of the fee assessment will be minimal.” Imposing even “minimal” fees that impact group health plans adds cost and administrative burden for employers who seek to offer affordable, comprehensive health benefits to their workforce.

We are also concerned that the fee assessment could be increased for 2019 and/or in future years. The Waiver Application notes that the actuarial modeling and key assumptions for 2019 as discussed in the Waiver Application do not reflect the potential impact of pending federal regulations related to association health plans and short-term limited duration insurance. Both of these have the potential for significantly impacting individual insurance markets in terms of reducing enrollment and increasing premiums.

Finally and very importantly, we have serious concerns that fee assessments, if imposed on ERISA plans under a reinsurance program pursuant to state legislation and the Waiver Application could run afoul or otherwise interfere with the uniform regulatory framework established under ERISA and its preemption provision. ERISA has played an essential role in encouraging the sponsorship of employee benefits by providing a uniform standard by which employers can design and administer comprehensive and affordable benefit plans that best meet the needs of their workforce.

For the reasons discussed above, the Council strongly urges that any fee assessments intended to finance a reinsurance program for the individual insurance market not apply directly or indirectly to covered lives in employer-sponsored group health plans.

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Thank you for considering these comments on the Waiver Application. If you have any questions or would like to discuss these comments further, please contact us at (202) 289-6700.

Sincerely,

A handwritten signature in black ink that reads "Kathryn Wilber". The signature is written in a cursive, flowing style.

Kathryn Wilber  
Senior Counsel, Health Policy