**02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**031 BUREAU OF INSURANCE**

**Chapter 856: Combination of the Individual and Small Business Health Insurance Risk Pools**

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**Section 1. Authority and Purpose**

This rule is adopted pursuant to 24-A M.R.S. §§ 212 and 2792(5), to establish the necessary conditions and procedures for implementation of the pooled individual and small group health insurance market, and the extension of Maine Guaranteed Access Reinsurance Association coverage to small group health insurance.

**Section 2. Applicability and Scope**

This rule shall apply to all individual health plans, as defined in 24-A M.R.S. §2736‑C(1)(C), and to all small group health plans, as defined in 24-A M.R.S. §2808-B(1)(G), issued or renewed as pooled market health plans on or after January 1, 2023. Section 6 applies to the operations of the Maine Guaranteed Access Reinsurance Association on and after January 1, 2022.

**Section 3. Definitions**

The following definitions apply for purposes of this rule:

1. “Carrier” has the same meaning as in 24-A M.R.S. §4301-A(3).

2. “Innovation waiver amendment” means a revision of the state innovation waiver that was granted to the State of Maine under Section 1332 of the federal Affordable Care Act and is in force on the effective date of this rule, or any substitute or replacement of that waiver issued or applied for under Section 1332 or a successor federal program.

3. “Maine Guaranteed Access Reinsurance Association” or “Association” has the same meaning as in 24-A M.R.S. §3952(1).

4. “Implementation year” means the first calendar year in which the individual and small group markets are pooled pursuant to this rule.

5. “Pooled market health plan” means any individual or small group health plan, as defined in 24-A M.R.S. §§ 2736‑C(1)(C) and 2808-B(1)(G), issued or renewed in this State during or after the implementation year, other than a multiple-employer plan that has been approved as a separate rating pool under 24‑A M.R.S. §2808-B(2)(E).

6. “Provisional implementation year” means 2023 or, if applicable, the alternative provisional implementation year most recently established by the Superintendent pursuant to subsection 6(B).

7. “Retrospective reinsurance program” means a reinsurance program under which all eligible policies are covered by the Association, without regard for an insured individual’s health condition and without requiring any advance designation for reinsurance.

**Section 4. Establishment of Pooled Market**

1. *Review of Expected Savings.* The Superintendent shall commence the implementation process by evaluating the expected premium savings, if any, resulting from the implementation of the pooled market and the Association’s reinsurance program.

A. The Superintendent shall conduct an actuarial analysis of the expected premium impact of the pooled market and the reinsurance program, and shall consider any other analyses that may be provided by the Association or by members of the public. The Association shall provide its estimate of the impact of pooling the market on anticipated reinsurance parameters for the provisional implementation year, including attachment points, coinsurance percentages, and any reinsurance caps and ceding premiums.

B. The Superintendent shall solicit public input on the expected impact of the pooled market and the reinsurance program, and suggestions for additional or alternate initiatives to improve the stability and affordability of the small group market.

C. The Superintendent shall hold at least one forum where the public may provide comments and ask questions. This requirement may be satisfied by a forum or hearing held in connection with the preliminary application process for an innovation waiver amendment under subsection 3.

2. *Superintendent’s Projection of Expected Savings.* After considering the available information on expected premium savings and the feedback received pursuant to subsection 1, the Superintendent shall decide whether to proceed with the scheduled implementation of the pooled market and the extension of the Association’s reinsurance program to small employers. The Superintendent shall issue a projection comparing expected health insurance premiums for individuals and small employers, if the pooled market is implemented and is reinsured by the Association in accordance with section 6, to a baseline with no pooled market and no subsidized reinsurance program.

A. If the Superintendent finds that the average premium for individuals in the pooled market scenario is expected to be the same or lower than the average premium for the individual market in the baseline scenario, and that the average premium for small employers in the pooled market scenario is expected to be the same or lower than the average premium for the small group market in the baseline scenario, the Superintendent shall proceed with the implementation process as provided in subsections 3 and 4.

B. If the Superintendent does not find, in accordance with paragraph A, that the pooled market scenario is expected to avoid adverse premium impacts for both individuals and small employers in the provisional implementation year, the Superintendent shall defer implementation as provided in subsection 6.

3. *State-Federal Partnership Applications.* The Superintendent shall initiate planning for an innovation waiver amendment as part of the review process conducted under subsection 1.

A. The Superintendent shall ensure timely compliance with all applicable application requirements.

B. In addition to the pooled market and pooled reinsurance program, an innovation waiver application may also include any other provisions that would improve the stability and affordability of the small group market or would otherwise benefit the operation of Maine’s health insurance market.

C. Whether or not the pooled market is implemented, the Superintendent shall consider whether there are any other opportunities for state-federal partnerships, as defined in 24-A M.R.S. §2781, or private funding, that would provide additional resources for the Association or otherwise benefit the operation of Maine’s health insurance market, and initiate or coordinate applications as the Superintendent considers appropriate.

D. The Superintendent shall ensure that the Association and all other interested parties have a meaningful opportunity for input in developing any application submitted under Paragraphs A through C.

4. *Final Decision Whether to Implement Pooled Market.* The Superintendent shall issue a final decision on implementation of the pooled market after considering any actions taken on applications submitted in accordance with subsection 3 and any new information obtained while such applications are pending. The provisional implementation year shall be confirmed as the implementation year unless:

A. The innovation waiver amendment is denied, or federal authorities have failed to act on the innovation waiver amendment in time for it to be feasible to implement the pooled the market in the provisional implementation year;

B. The Superintendent finds that the proposed terms and conditions of an approved innovation waiver amendment would not be expected to avoid adverse premium impacts for both individuals and small employers; or

C. The Superintendent finds that in light of new and persuasive information about recent or expected market experience, it is no longer expected that the implementation of the proposed innovation waiver amendment would avoid adverse premium impacts for both individuals and small employers.

5. *Reconsideration.* If the Superintendent determines, after issuing a decision to implement or defer implementation of the pooled market, that the decision might no longer be appropriate due to extraordinary circumstances that have subsequently arisen, and that it is still feasible to rescind or modify the decision, the Superintendent may issue public notice and reopen the evaluation process under this section. Extraordinary circumstances include, without limitation, the availability of a new funding source for the Association, the loss of an existing funding source, or new information that results in a substantial increase or decrease in expected premium savings for the provisional implementation year.

6. *Decision to Defer Implementation.* If the Superintendent decides, pursuant to paragraph 2(B) or subsection 4, not to proceed with the scheduled implementation of the pooled market, the Superintendent shall:

A. Conduct an analysis of alternative proposals to improve the stability and affordability of the small group market;

B. Designate a new provisional implementation year; and

C. Withdraw any pending application that is dependent on pooling the market, or make any necessary modifications to postpone the effective date of the proposal.

**Section 5. Operation of Pooled Market**

The provisions of this section shall apply to all pooled market health plans providing coverage in this State.

1. *Guaranteed Issue and Guaranteed Renewal.* Except as prohibited by federal law with respect to catastrophic plans:

A. Every carrier offering any pooled market health plan must offer the same plan to all individuals and small employers within any service area where the carrier has made the plan available, subject to the network capacity limitations of 24-A M.R.S. §§ 2736-C(3)(A)(2) and 2808-B(4)(A)(2). Coverage for individuals, and coverage for small employers that fail to meet the carrier’s approved participation requirements, shall be available only during annual open enrollment periods and designated special enrollment periods.

B. No pooled market health plans may be added or discontinued after the rate and form filing deadline established by the Superintendent.

C. This subsection does not require carriers to market all pooled market health plans in the same manner to all customers. A carrier may vary its marketing strategies and distribution channels, including the decision whether to offer a plan on the Maine Health Insurance Marketplace established pursuant to 22 M.R.S. §5403, between one plan and another, between one service area and another, or between individuals and small employers, as long as the carrier does not discriminate on the basis of actual or perceived health risk or other prohibited classifications.

D. All pooled market health plans must be guaranteed renewable, subject to the carrier’s right to discontinue or modify coverage when permitted by 24‑A M.R.S. §2850-B(3) and applicable contract terms.

E, This section does not prohibit differences in the administrative provisions of the policy forms issued to individuals and the coverage documents for the same plan issued to small employers and plan participants, if the variations in contract terms are reasonably related to the differences in the mode of coverage, and do not affect the plan benefits or premium rates except to the extent expressly permitted by this rule or required by controlling law.

2. *Unified Rating Process.* Proposed rates for all pooled market health plans shall be filed and reviewed annually in accordance with 24-A M.R.S. §§ 2736 through 2736-C, which shall supersede any provisions of the Insurance Code that would otherwise establish different requirements or procedures for small group health plans.

A. This subsection does not prohibit composite rating of small group health plans, to the extent permitted by federal law, in accordance with procedures published by the Superintendent.

B. Catastrophic plans shall be adjusted for the expected impact of the special eligibility categories for these plans. Carriers may not recover this adjustment elsewhere in the rating process, because such an adjustment would remove the catastrophic plan experience from the single risk pool,

3. *ACA Compliance.* When the Superintendent makes a final determination to implement the pooled market, the Superintendent shall promptly notify applicable federal officials, and shall make all necessary arrangements to ensure compliance with the provisions of the federal Affordable Care Act governing merged markets, including, without limitation: risk adjustment, minimum medical loss ratio requirements, and ratemaking and rate filing for pooled market health plans.

**Section 6.**  **Reinsurance Coverage by the Association**

1. *Pooled Reinsurance Program.* During and after the implementation year, the Association shall administer a retrospective reinsurance program for pooled market health plans.

2. *Amendments to Plan of Operation.* Within 45 days after the Superintendent issues a final decision to implement the pooled market, the Association shall file with the Superintendent all amendments to its Plan of Operation that the Association’s board determines to be necessary, including, without limitation:

A. The number of layers of coverage, the attachment point and coinsurance percentage for each layer, and the cap, if any, for the top layer of coverage;

B. The ceding premium, if any, to be charged;

C. The accumulation of claims for participants enrolled in non-calendar-year small group plans; and

D. Any other material terms of coverage.

3. *Coverage While Implementation is Deferred.* Until the implementation year, the Association shall continue to provide prospective coverage for individual health plans in accordance with 24-A M.R.S. §3959, unless the Association elects to change to a retrospective reinsurance program as permitted by 24-A M.R.S. §3958(1)(A-1).

**Section 7. Severability**

If any section, term, or provision of this rule shall be deemed invalid for any reason, any remaining section, provision, or definition shall remain in full force and effect.

**Section 8.**  **Effective date**

This rule is effective January 24, 2022 – filing 2022-012.