



STATE OF MAINE
HOUSE OF REPRESENTATIVES
AUGUSTA, MAINE 04333-0002

September 18, 2018

The Honorable Seema Verma, Administrator
Department of Health and Human Services
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244
And via email: seema.verma@cms.hhs.gov

Re: Additional Legislative Information for Maine State Plan Amendment No. 18-0006, 18-0007

Dear Administrator Verma,

On September 4, 2018, the State of Maine formally submitted a State Plan Amendments 18-0006 and 18-0007 regarding expansion of eligibility for MaineCare (Maine's Medicaid program) under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act for individuals making up to 133% of the federal poverty level and claiming of federal financial participation for that expansion. While this request is under review by CMS, we wanted to provide additional information for your consideration.

On November 7, 2017, Maine voters approved "An Act To Enhance Access to Affordable Health Care", a citizen-initiated ballot measure expanding Medicaid eligibility under the terms of the Affordable Care Act. I.B. 2017, ch. 1. That referendum passed overwhelmingly, gathering 59% of the vote, and pursuant to Maine's Constitution that law went into effect on January 3, 2018. Under Maine's constitution the governor has no veto power over a citizen-enacted referendum. This law has not been amended or repealed and is currently in effect. Over 70,000 uninsured Mainers are estimated to now be eligible to receive MaineCare as a result of this law.

Language from the referendum is codified at 22 MRSA §3174-G(1)(H) and states that qualified applicants are eligible for MaineCare coverage within 180 days of the effective date of the statute (July 2, 2018) and requires that Maine file its necessary State Plan Amendment (SPA) with CMS within 90 days of the effective date (April 3, 2018). It is our hope that CMS will immediately approve this state plan amendment and that Maine's Department of Health and Human Services (DHHS) will begin complying with the law. We do not believe that there is any reason that CMS should not act immediately in approving this *pro forma* application that CMS has already approved with respect to 32 other states (and Washington D.C.) who have similarly chosen to expand.

We are aware that Maine's Governor Paul LePage has taken the extraordinary step of corresponding with you and Secretary Azar requesting that CMS deny the SPA submitted by his own Acting DHHS Commissioner. We do not believe there is any basis in fact or law for CMS to give Governor LePage's letter any weight or consideration. However, we do think it is important to respond to, and clarify the governor's comments regarding the Legislature's role in implementing the expansion because they are misleading, incomplete and factually inaccurate in most respects.

As described below, Maine does have ample funds to meet its legal obligations to expand MaineCare to over 70,000 Mainers who need healthcare and who are entitled to receive it under the law. Maine's legislature did make funds available to the LePage Administration specifically for the purpose of funding the cost of expansion. At every juncture the LePage administration has refused to cooperate with legislative efforts to support the implementation and funding of legally-mandated expansion, culminating with the governor's veto of a bill that the legislature put on his desk providing the funding he estimates he needs. Even so, there is no legal or factual obstacle to the State's full participation in the cost of expansion, and thus no reason to delay or reject the filed SPA.

The Legislature Has Evaluated and Appropriated the Actual Cost of Expansion

In spite of the claims that Governor LePage made in his letter to you and Secretary Azar, the Maine Legislature did act to consider the cost of expansion and did provide funding to the administration specifically to cover the cost of expansion. The governor chose not to work with the legislature in its effort to determine the true cost. When the legislature ultimately put a bill on his desk providing funding at the level he requested, Governor LePage vetoed the bill.

Immediately after the passage of the referendum, the Legislature's Joint Standing Committee on Appropriations and Financial Affairs (the "Committee") took steps to determine what expansion would cost and what steps if any Maine's Legislature would need to take to provide funding to DHHS. The original referendum question contained a fiscal analysis prepared by the Legislature's non-partisan staff at the Office of Fiscal and Program Review (OFPR). That fiscal analysis estimated the first year cost of expansion to be \$30.9 million¹. The Committee convened a meeting on December 13, 2017 to review this analysis with OFPR staff. The Committee chairs sent a letter to Governor LePage inviting him to send representatives from the executive branch to present information of additional cost estimates. No one from Governor LePage's office or the executive branch attended the meeting.

On January 3, 2018, in response to written questions from the Committee the LePage Administration provided an estimate that the first-year cost of expansion would be \$58.5M².

In March 2018, the Committee received a third estimate. This independent analysis of the cost of expansion was provided by the not-for-profit Maine Health Access Foundation (MeHAF). This analysis was prepared by Manatt Health. Manatt's report detailed the impact that expansion would have on the state budget through 2021. In its analysis, Manatt Health estimated that approximately 71,500 Maine residents would gain MaineCare coverage under expansion by fiscal year 2021 —

¹ <http://legislature.maine.gov/doc/2252>

² <http://legislature.maine.gov/doc/2082>

including 62,000 adults and 9,500 parents and children who were currently eligible, but not enrolled.

The Manatt report confirmed the OFPR analysis that the cost of Medicaid Expansion would be partially offset by significant savings in other programs. Based on the experience of states that already opted to provide expanded Medicaid coverage, Maine was projected to save as much as \$25.6 million by 2021. The net cost to the state was projected to be \$30.5 million in the state's 2019 fiscal year and \$48.59 million in 2020.

At this point the Committee had three cost estimates - the original estimate provided for the referendum by non-partisan OFPR staff, the estimate provided by the Administration and the estimate provided by Manatt.

On April 4, 2018 the Committee met to discuss the three cost estimates. Non-partisan OFPR staff and representatives from Manatt attended to answer the Committee's questions and to help the Committee come to a reconciliation of the three differing estimates. The LePage administration was invited to attend and participate, but declined to do so.

At the April 4 meeting OFPR presented information demonstrating that, based upon the current appropriations, Maine's Medicaid program had ample funds to support the cost of the expansion population through May of 2019. This remained true even if the highest estimates provided by the administration were used for the purpose of determining the funding needs.

After reviewing the three different cost analyses, the Committee convened a public hearing on LD 837³, *An Act To Provide Supplemental Appropriations and Allocations for the Operations of State Government*, to provide funding to DHHS for the administrative costs of expansion. Thirty-five people testified in support of funding expansion. No one testified in opposition. The LePage administration did not attend the hearing or provide testimony.

On April 10, 2018, the Committee held a work session to consider action on the bill. The LePage Administration declined to attend the work session or to offer any additional information to the Committee. At that work session the Committee voted in favor of LD 837.

LD 837 was amended by the Legislature to include not just the administrative costs, but the full estimated cost of claims, at the highest estimate possible from the DHHS. That bill made available to the LePage Administration funding based upon their chosen estimates. In other words, even though the estimates provided by non-partisan legislative staff and in the independent Manatt report were much lower than the amount that the Governor said he needed, the legislature decided to give the LePage administration every penny requested.

On June 19, the Democratically-controlled Maine House of Representatives passed LD 837. On June 20, the Republican-controlled Maine Senate passed this legislation also and it was sent to the governor's desk.

³ https://legislature.maine.gov/legis/bills/display_ps.asp?LD=837&snum=128

On July 2, Governor LePage vetoed this bill.⁴ In his letter⁵, the governor said "I previously vetoed Medicaid expansion six times, and I count those six vetoes among the most important acts of my governorship." On July 9, a majority of the Maine House voted to override the veto but the vote did not meet the $\frac{2}{3}$ threshold ultimately necessary for an override.

Maine Has Ample Funds for Expansion

Due primarily to strong economic growth, Maine's revenues are projected to grow at a pace that far exceeds the projected cost of expansion, and actual revenues continue to exceed those projections. The March forecast projected revenue growth in fiscal years 2020 and 2021 of \$79.2M and \$70.5M respectively, demonstrating that Maine not only will have funds for expansion in the current fiscal year, but also in future years.

Like many states, the Maine constitution requires Maine to have a balanced budget. In Maine, the amount available to spend for Medicaid and other programs is based upon revenue estimates determined periodically by a revenue forecasting commission. The Maine Revenue Forecasting Commission is chaired by a member of the governor's executive staff who also serves as the director of Maine Revenue Services.

Maine's Revenue Forecasting Commission issues its forecasts twice a year. As Maine has recovered from the Great Recession, Maine's projections with respect to revenue have consistently improved and actual revenues have exceeded those projections. In March, the Commission revised estimates for fiscal years 2018 and 2019 upwards by \$129 million. In fact, this new forecast has proven to be extremely conservative because between the projection in March and the end of June, actual revenue collections for SFY (State Fiscal Year) 2018 exceeded the forecast by an additional \$100M. In July 2018, the first month of the state's new fiscal year, revenue collections exceeded the forecast by an additional \$20.8M.

Governor LePage Failed to Submit Formal Plan for Funding

Finally, in his letter to you and Secretary Azar, Governor LePage makes the assertion that, "I even suggested some funding sources, but the Legislature chose not to accept my suggestions." At no point during this legislative session or in any of our committee meetings on the subject did the governor bring forward to the Legislature or the committee an actual proposal or piece of legislation.

Understand that under Maine's rules the governor is in a unique position and has the power and authority to submit bills at any time on any matter. He can even call the Legislature back into a special session to consider items of significant importance. During our Second Regular Session and our current Special Session, the governor submitted 46 bills (94 total for the entirety of the 128th Legislature) - none of which addressed an appropriation for expansion. The legislation he chose to submit was projected to spend over \$100M on other items his Administration considered to be priorities. If identifying funding for Medicaid Expansion were seriously a concern of the governor, he had ample opportunity to engage in the legislative process. He chose not to.

⁴ <http://legislature.maine.gov/LawMakerWeb/summary.asp?paper=HP0586&SessionID=12>

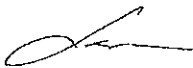
⁵ <http://www.maine.gov/tools/whatsnew/attach.php?id=802051&an=1>

In conclusion, the Legislature has fulfilled its obligation and passed an appropriation to fund the cost of expansion at a level that meets the governor's demands, even though other independent analysis suggests that the true cost is much less than the governor claims. The governor's decision to veto this legislation does not change the fact that the expansion of MaineCare is mandated by Maine law. Because that law cannot be vetoed and directs the State to provide coverage for the expansion group, the State clearly has both the authority and the obligation to draw down already appropriated Medicaid funds to cover all groups including the expansion group. Current appropriations to the Medicaid account will cover the cost of expansion until the very end of the state's current fiscal year, and Maine has sufficient unappropriated surplus and reserves to cover any possible shortfall. If any shortfall arises from the Governor's veto of LD 837, it can be addressed when the Legislature reconvenes in January 2019, five months before the earliest date on which previously appropriated funds would run out. Revenue projections looking forward indicate that there will continue to be sufficient revenue growth to cover the future costs of expansion.


These facts leave no doubt that the objections of the governor have no factual basis, and that his request for you to reject the SPA are contrary to the duly enacted law of the State of Maine, which establishes that Maine has in fact elected to participate in expansion. When a State makes that choice, CMS has a responsibility to participate in the cost of that choice and to work with the State to implement expansion, not to reinforce any State official's resistance to the plain requirements of the law.

Thank you for your consideration of this request. Please do not hesitate to contact us with any further questions.

Respectfully Submitted,



Sara Gideon
Speaker of the Maine House of Representatives



Representative Drew Gattine
House Chair of the Appropriations and Financial Affairs Committee

cc: Richard R. McGreal, Associate Regional Administrator
Secretary Alex Azar
Governor Paul R. LePage