



State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF THE COMMISSIONER

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Governor

SHEILA OLIVER
Lt. Governor

MARLENE CARIDE
Commissioner

January 27, 2023

The Honorable Janet Yellen
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Xavier Becerra
Secretary of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretaries Yellen and Becerra,

The State of New Jersey, through the New Jersey Department of Banking and Insurance, is pleased to submit this letter of intent to extend the State's existing 1332 State Innovation Waiver for an additional five-year period. Section 1312(c)(1) of the Patient Protection and Affordable Care Act (ACA) is waived for years 2019 through 2023 to allow the state to implement a reinsurance program. The State intends to request that this waiver be extended for an additional five-year period from 2024 through 2028. The waiver will continue to adhere to the guardrails established by Section 1332.

In 2018, the New Jersey State Legislature passed, and Governor Phil Murphy signed, the New Jersey Health Insurance Premium Security Act (the Act) codified as P.L.2018, Chapter 24. The Act established a reinsurance program to stabilize or reduce premiums in the individual health insurance market. Beginning in 2019, and in each year thereafter, the program has succeeded in achieving premiums that are 15 percent lower than they would be without the program. As a result of the reinsurance program, and additional State and Federal programs to increase affordability in the individual market, New Jersey has experienced significant enrollment increases in the individual market.

In 2020, Governor Murphy signed legislation to transfer the repealed annual fee on health insurance carriers to the State to fund a state subsidy called New Jersey Health Plan Savings (NJHPS), which began being delivered in plan year 2021. The NJHPS makes individual health coverage more affordable in New Jersey and are in addition to

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RE: Section 1312(c)(1) of the Patient Protection and Affordable Care Act (ACA)

federal tax credits. These savings are delivered to income-eligible consumers through the State's Health Insurance Marketplace, Get Covered New Jersey.

The New Jersey State Legislature and Governor Murphy also invested \$20 million in the Fiscal Year 2022 State budget and additional funding in the Fiscal Year 2023 budget for Phase 1 of a Cover All Kids campaign aimed at removing barriers to health coverage for children. Phase 2 of that campaign will provide coverage options for children of undocumented status and those whose families' incomes are over NJ Family Care eligibility, but still find coverage unaffordable.

Continuing this progress towards access for coverage for all New Jersey residents, in addition to extending the current waiver of Section 1312(c)(1) to operate the State's reinsurance program, New Jersey also intends to submit an application to amend its waiver to also waive section 1312(f)(3) of the ACA for a five-year period from 2024 through 2028. Consistent with a State Innovation Waiver recently approved by your departments, New Jersey intends to expand access to qualified health plans, stand-alone qualified dental plans, and NJHPS to New Jersey residents regardless of immigration status. Such a waiver of section 1312(f)(3) would allow all qualifying income-eligible residents, regardless of immigration status, to benefit from NJHPS through Get Covered New Jersey.

Thank you for your consideration and we look forward to working with your departments to develop an individual health insurance market that ensures that affordable health coverage is available for New Jersey residents.

Marlene Caride



Commissioner

CC: Justin Zimmerman, Chief of Staff, New Jersey Department of Banking and Insurance

Philip Gennace, Counsel to the Office the Commissioner, New Jersey Department of Banking and Insurance

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201



March 2, 2023

VIA ELECTRONIC MAIL: marlene.caride@dobi.nj.gov

Marlene Caride
Commissioner
New Jersey Department of Banking and Insurance
20 West State Street
Trenton, NJ 08625

Dear Commissioner Caride:

Thank you for your January 27, 2023 letter of intent (LOI) to apply for an extension of and amendment to New Jersey's State Innovation Waiver (section 1332 waiver) under Section 1332 of the Affordable Care Act (ACA). I am sending this letter from the Center for Consumer Information and Insurance Oversight (CCIIO) within the Centers for Medicare & Medicaid Services (CMS) under the Department of Health & Human Services (HHS), as well as on behalf of the Department of the Treasury (collectively, the Departments).

The state informed the Departments eleven months prior to its currently approved section 1332 waiver's end date of the state's intent to apply for continuation of and amendment to its waiver. While at least twelve months of advance notice of a waiver extension is required to apply for continuation of a waiver (as specified by the specific terms and conditions (STCs) governing New Jersey's waiver),¹ and at least fifteen months of advance notice of a waiver amendment is recommended to apply for an amendment of an existing waiver,² the Departments confirm that the state's anticipated section 1332 waiver extension and waiver amendment applications may be submitted and will be accepted for review by the Departments. The requirements for the state's waiver extension and waiver amendment applications are enclosed with this letter. If the state chooses to submit a combined application for a waiver extension and a waiver amendment, the Departments will apply the review timeline applicable to waiver amendment applications. The Departments understand that if the Departments do not approve the state's waiver amendment application, the state would like to seek approval of its waiver extension application alone in order to continue operating its reinsurance waiver in its current form for an additional waiver period of five years from January 1, 2024 through December 31, 2028. If the extension application and/or amendment application are approved, the Departments may determine that the

¹ See STC 9. The applicable STCs are available here: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-STC-NJ-Signed.pdf>.

² The Departments encourage states to submit the letter of intent at least 15 months prior to the section 1332 waiver amendment's proposed implementation date and to engage with the Departments early in the development of a potential waiver amendment. See 86 FR 53483 to 53484. Available at: <https://www.govinfo.gov/content/pkg/FR-2021-09-27/pdf/2021-20509.pdf>.

waiver extension and/or amendment will be subject to additional or revised requirements, which will be provided in the extension and/or amendment STCs.

The state's currently approved waiver of the ACA requirement for the single risk pool contained in ACA section 1312(c)(1) allows the state to operate a state-based reinsurance program for the individual health insurance market from January 1, 2019 through December 31, 2023. As described in the January 27, 2023 LOI, the state seeks to waive ACA section 1312(c)(1) for an additional waiver period of five years from January 1, 2024 through December 31, 2028, to support the continued operation of its individual market state-based reinsurance program.

A waiver extension cannot propose any changes to the existing waiver that are not otherwise allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design. Given that, absent approval of the waiver amendment application, the state has indicated it does not intend to change any features of its reinsurance waiver plan (except for the extended time period), the Departments confirm that the state may proceed with submitting an application for an extension of its reinsurance waiver. The Departments encourage the state to submit its reinsurance waiver extension application sufficiently in advance of the requested waiver effective date, ideally no later than the first quarter of 2023.

Additionally, as described in the January 27, 2023 LOI, New Jersey also seeks to amend its currently approved section 1332 waiver in order to expand access to qualified health plans, stand-alone qualified dental plans, and the state subsidy (New Jersey Health Plan Savings) to qualifying income-eligible New Jersey residents, regardless of immigration status, through its state-based marketplace Get Covered New Jersey. Under this proposed waiver amendment, the state seeks to waive ACA section 1312(f)(3) for a waiver period of five years from January 1, 2024 through December 31, 2028.

A waiver amendment is a change to the existing waiver plan that is not otherwise allowable under the state's STCs, or that the Departments determine could impact any of the section 1332 statutory guardrails or program design for an approved waiver. Such changes include, but are not limited to, changes to eligibility, coverage, benefits, premiums, out-of-pocket spending, and cost sharing. Given that the state has indicated it would like to waive an additional statutory provision, ACA section 1312(f)(3), and add corresponding features to its approved waiver plan, the Departments have determined that this is a substantive change in program design that is not otherwise allowable under the state's existing STCs. As such, the Departments confirm that the state must also proceed with submitting an application for a waiver amendment if the state wishes to pursue making this change. The Departments similarly urge the state to submit its waiver amendment application sufficiently in advance of the requested waiver effective date, ideally no later than the first quarter of 2023 to ensure sufficient time for the Departments to review the application and allow New Jersey, if the waiver is approved, to implement the waiver plan in plan year (PY) 2024. Failure to submit a waiver amendment application by the end of the first quarter of 2023 could jeopardize the New Jersey's ability to implement the waiver plan, if approved, in PY 2024.³

³ Also see 86 FR 53484. Available at: <https://www.govinfo.gov/content/pkg/FR-2021-09-27/pdf/2021-20509.pdf>.

The enclosed document further outlines the application requirements for the state's waiver extension and waiver amendment. Once the Departments receive the state's waiver extension and amendment applications, the Departments will conduct a preliminary review to determine if the applications are complete and, if necessary, will identify the elements that are missing from the applications by written notice. Please note, the state is not authorized to implement any aspect of the proposed waiver extension or amendment without written approval by the Departments. This letter does not constitute any pre-determination or intent to approve the state's proposed extension and/or amendment applications

Please send your acknowledgement of this letter and any communications and questions regarding program matters or official correspondence concerning the waiver to Lina Rashid at Lina.Rashid@cms.hhs.gov or stateinnovationwaivers@cms.hhs.gov.

We look forward to working with you and your staff. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen Montz". The signature is written in a cursive, flowing style.

Ellen Montz, Ph.D.
Director, Center for Consumer Information & Insurance Oversight (CCIIO)
Deputy Administrator, Centers for Medicare & Medicaid Services (CMS)

Cc: Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
The Honorable Philip Murphy, Governor, State of New Jersey
Justin Zimmerman, Chief of Staff, New Jersey Department of Banking and Insurance
Philip Gennace, Counsel to the Office of the Commissioner, New Jersey Department of Banking and Insurance

Enclosure

Appendix A: Specific Requirements for New Jersey's Waiver Extension Application

The Departments will conduct a preliminary review of New Jersey's (hereafter referred to as the "state") waiver extension application and make a preliminary determination as to whether it is complete within approximately 30 days after it is submitted to stateinnovationwaivers@cms.hhs.gov. If the Departments determine that the application is complete, the application will be made public through the Department of Health and Human Services website, and a 30-day federal public comment period will commence while the application is under review. A final decision regarding the waiver will be issued no later than 90 days after the preliminary determination of a complete application. If the Departments determine that the application is not complete, the Departments will send the state a written notice of the elements missing from the application. The state's waiver extension application must include the following:

- (1) A detailed description of the extension request, including the desired time period for the extension. The state must confirm there are no changes to the current waiver plan for the new waiver period that are otherwise not allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design;
- (2) Updated economic or actuarial analyses for the extension period, if the state is aware of changes in state law, the state insurance market, or to the waiver program that are allowable under the STCs and impact waiver assumptions and projections, and that the state has not previously shared with the Departments via its reporting requirements;
- (3) Preliminary evaluation data and analysis of observable outcomes from the existing waiver program, which includes quantitative or qualitative information on why the state believes the program did or did not meet the statutory guardrails. For example, the state may provide information comparing the originally projected premium reductions or expected claims reimbursements to the actual values of the outcomes observed;
- (4) Evidence of sufficient authority under state law(s) in order to meet the ACA section 1332(b)(2)(A) requirement for purposes of pursuing the requested extension;
- (5) An explanation and evidence of the process to ensure meaningful public input on the extension request, which must include:
 - a. For a state with one or more Federally-recognized Indian tribes within its borders, providing a separate process for meaningful consultation with such tribes, and providing written evidence of the state's compliance with this requirement;
 - b. Publicly posting the submitted LOI on the state's website to ensure that the public is aware that the state is contemplating a waiver extension request; and
 - c. Publicly posting the waiver extension application on the state's website upon its submission of the waiver extension application to the Departments.

The state does not have to meet all of the public notice requirements specified for new waiver applications in 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312 (e.g., holding two public hearings and providing a 30-day comment period) to fulfill

paragraph (5) above. However, the state must ensure and demonstrate there was an opportunity for meaningful public input on the extension request. For example, the state may choose to hold one public hearing or provide an amended or shorter comment period, or some combination of both. If the state holds one public hearing, it can use its annual public forum for the dual purposes of gathering input on the existing waiver as well as the extension application request.

- (6) The Departments may request additional information and/or analysis in order to evaluate and reach a decision on the requested extension.

Appendix B: Specific Requirements for New Jersey's Waiver Amendment Application

The Departments will review the state's waiver amendment application and make a preliminary determination as to whether it is complete within 45 days after it is submitted to stateinnovationwaivers@cms.hhs.gov. After determining that the application is complete, the application will be made public through the Department of Health and Human Services website, and a 30-day federal public comment period will commence while the application is under review. A final decision regarding the waiver will be issued no later than 180 days after the preliminary determination of a complete application. If the Departments determine that the application is not complete, the Departments will send the state a written notice of the elements missing from the application. The state's waiver amendment application must include the following:¹

- (1) A detailed description of the amendment request, including:
 - a. The desired time period for the amendment request;
 - b. The scope of the waiver plan, including whether the state seeks to waive any new provisions and the rationale for the waiver;
 - c. The impact on the guardrails;
 - d. Related changes to the waiver program elements, as applicable, that are not otherwise allowable under the state's STCs;
 - e. An updated implementation timeline;
 - f. Any activities at the state level that are outside of the waiver, but that impact the baseline;² and
 - g. Sufficient supporting documentation.

- (2) An explanation and evidence that the state has conducted the state public notice process specified for new applications at 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312, which includes:
 - a. For a state with one or more Federally-recognized Indian tribes within its borders, providing a separate process for meaningful consultation with such tribes, and providing written evidence of the state's compliance with this requirement;
 - b. Publicly posting the submitted LOI on the state's website in order to ensure that the public is aware that the state is contemplating a waiver amendment request;
 - c. Providing a public notice and comment period of no less than 30 days that includes a comprehensive description of the waiver amendment application; information about where the application is available for public review; and where the written comments may be submitted;
 - d. Publishing the date, time, and location of the public hearings that will be convened by the state to seek public input on the waiver amendment application in a prominent location on the state's public website. The state

¹ If the state chooses to submit a combined application for a waiver extension and a waiver amendment, the Departments will apply the review timeline applicable to waiver amendment applications.

² The state should include if there are any changes to eligibility or subsidy amounts for the New Jersey Health Plan Savings (NJHPS).

may use its annual public forum for the dual purpose of seeking public input on a waiver amendment application;

- e. Providing a description of issues raised and comments received during the entire public notice and comment period, and how the state considered comments when developing the waiver amendment application; and
- f. Publicly posting the waiver amendment application on the state's website upon its submission of the waiver amendment application to the Departments.

(3) Evidence of sufficient authority under state law(s) in order to meet the ACA section 1332(b)(2)(A) requirement for purposes of pursuing the requested amendment(s);

(4) An updated actuarial and/or economic analysis demonstrating how the proposed amended waiver will meet section 1332 statutory guardrails. Such analysis must separately identify, in the "with waiver" scenario, the impact of the requested amendment on the statutory guardrails. Such analysis must include a "with waiver" and "without waiver" status on both a summary and detailed level through the proposed approval period using data from recent experience, as well as a summary of and detailed projections of the change in the "with waiver" scenario attributable to the waiver amendment;

- a. For all waiver proposals, the state should use a baseline in which there is no state waiver plan in effect, and should compare premiums, comprehensiveness, and coverage under the baseline for each year to those projected under both the currently approved waiver and the proposed, amended waiver (to allow the Departments to separately evaluate the impact of the amendment on the existing 'with-waiver' scenario). For waivers that impact the individual market, data used to produce these projections might include overall premiums (e.g., for analysis of affordability) and Second Lowest Cost Silver Plan (SLCSP) premiums (e.g., for analysis of deficit neutrality).

- i. A projection of the following items separately under the 'without-waiver' scenario, the currently approved 'with-waiver' scenario, and the amended 'with-waiver' scenario:

- A. Number of non-group market enrollees by income as a share of the Federal Poverty Level (FPL) (0% to 99%, $\geq 100\%$ to $\leq 150\%$, $> 150\%$ to $\leq 200\%$, $> 200\%$ to $\leq 250\%$, $> 250\%$ to $\leq 300\%$, $> 300\%$ to $\leq 400\%$, and greater than 400% of FPL), by PTC-eligibility, and by plan;

- B. Overall average non-group market premium rate;

- C. SLCSP rate for a representative consumer (e.g., a 21-year old nonsmoker), by rating area and issuer-specific service area. The state needs to identify where issuers have service areas that are smaller than rating areas;

D. The state's age rating curve (or a statement that the federal default is used);

E. Aggregate non-group market premiums, aggregate small group market premiums, and PTC; and

F. Exchange user fee for State-based Exchanges using the Federal Platform (SBE-FP) states.

- ii. Documentation of all assumptions and methodology used to develop the projections and growth of health care spending.
- iii. For waivers that impact the small group market, the actuarial and/or economic analysis must include the applicable information above in subparagraphs (i) and (ii) for the small group market. In particular, the state should include the average small group market premium rate, as well as the additional applicable information in subparagraphs (i) and (ii) for the small group market.

(5) An explanation of the expected impact, if any, of the proposed amendment on pass-through funding, as well as any new proposed uses for pass-through funding; and

(6) The Departments may request additional information and/or analysis in order to evaluate and reach a decision on the proposed amendment.