

November 29, 2021

Secretary Xavier Becerra
United States Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Secretary Janet Yellen
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

VIA E-Mail

RE: Minnesota 1332 State Innovation Waiver Extension

Dear Secretaries Becerra and Yellen:

The Minnesota Department of Commerce (Commerce) respectfully submits this letter of intent to apply for a five-year extension of the state's existing Section 1332 State Innovation Waiver. Minnesota requests that our existing waiver be extended for the period of 2023 through 2027.

As reported to the Centers for Medicare & Medicaid Services (CMS), in June 2021, the Minnesota Legislature extended our state's reinsurance program through plan year 2022 and modified the program parameters to reduce the coinsurance rate from 80 percent to 60 percent. Currently, Minnesota is not planning to make significant changes to the structure of the existing waiver, aside from making adjustments for the timeframe and the recent legislatively enacted change in the coinsurance parameters. The waiver will continue to align with the guardrails established by Section 1332.

Pursuant to state-requirements, Commerce plans to submit a draft waiver extension application and actuarial analysis by December 31, 2021. We will provide the necessary amendments to the application based on any enabling legislation is enacted by the State.

Thank you for your continued efforts to support a stabilized individual health insurance market in Minnesota.

Sincerely,



Grace Arnold
Commissioner

Cc: Julia Dreier, Deputy Commissioner - Minnesota Department of Commerce
Lina Rashid, Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, Department of Health and Human Services
Michelle Koltov, Center for Consumer Information and Insurance Oversight, Centers for Medicare & Medicaid Services, Department of Health & Human Services
Eda Herzog-Vitto, U.S. Department of the Treasury

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



January 13, 2022

VIA ELECTRONIC MAIL: grace.arnold@state.mn.us

Grace Arnold
Commissioner
Minnesota Department of Commerce
85 7th Place East, Suite 280
Saint Paul, MN 55101

Dear Commissioner Arnold:

Thank you for your November 29, 2021 letter of intent (LOI) to apply for an extension of Minnesota's State Innovation Waiver (section 1332 waiver) under section 1332 of the Patient Protection and 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 Departments acknowledge that the state has informed the Departments of the state's intent to apply for continuation of the waiver at least one year prior to the waiver's end date, as required by the specific terms and conditions (STCs) governing Minnesota's waiver.¹ The Departments confirm that Minnesota's anticipated section 1332 waiver extension application, as described below, may be submitted and will be reviewed as a waiver extension request. The requirements for the state's waiver extension application are enclosed with this letter. If the extension is approved, the Departments may determine the waiver extension will be subject to additional or revised requirements, which will be provided in the extension STCs.

Minnesota'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, 2018 through December 31, 2022. As described in the LOI, Minnesota seeks to waive ACA section 1312(c)(1) for an additional waiver period of five years from January 1, 2023 through December 31, 2027.

A waiver extension is an extension of the existing waiver terms and does not 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 Minnesota has indicated it does not intend to change any features of its waiver plan (except for

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

the extended time period), Minnesota may proceed with submitting an application for a waiver extension. The Departments encourage the state to submit its waiver extension application sufficiently in advance of the requested waiver effective date, ideally no later than the first quarter of 2022.

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

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,



Ellen Montz, PhD
Director

Center for Consumer Information & Insurance Oversight (CCIIO)
Centers for Medicare & Medicaid Services (CMS)

Cc: Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
The Honorable Tim Walz, Governor, State of Minnesota
Anne O'Connor, Chief Deputy Commissioner and Chief of Staff, Minnesota Department of Commerce
Julia Dreier, Deputy Commissioner, Minnesota Department of Commerce
Peter Brickwedde, Assistant Commissioner of Government and External Affairs, Minnesota Department of Commerce

Enclosure

Specific Requirements for Minnesota's Waiver Extension Application

The Departments will conduct a preliminary review of Minnesota's waiver extension application consistent with 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332 and the processes and procedures for extension requests recently finalized in rulemaking², 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. 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. Minnesota'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 requested 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.
 - a. Given changes in market conditions and in federal law and policy affecting the individual health insurance market (including, but not limited to, the COVID-19 pandemic, the associated Special Enrollment Period, and enactment of the American Rescue Plan Act of 2021), the Departments request a brief analysis that includes updated projections and assumptions for the 5-year waiver extension period, including information on:
 - i. Estimated enrollment with and without the waiver (i.e., estimated change in enrollment attributable to the waiver);
 1. Subsidized enrollment on the Exchange;
 2. Unsubsidized enrollment on the Exchange,
 3. Enrollment off the Exchange, to the extent available;
 - ii. Statewide average second lowest cost silver plan (SLCSP) premiums with and without the waiver;³
 - iii. Total projected state funding for the reinsurance program;
 - iv. Total projected reinsurance reimbursements; and
 - v. Projected pass-through funding.

If it is not feasible to obtain any of the items requested above, the state should engage with the Departments.

² See Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond; Final Rule, 86 FR 53412 at 53483 – 53486 (Sept. 27, 2021).

³ Unlike for new waiver applications, rating area-level premium data is not required.

- (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 requirement in section 1332(b)(2)(A) of the ACA for purposes of pursuing the requested extension;
- (5) An explanation and evidence of the process to ensure meaningful public input on the extension request at the state level, 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, the state may use its annual public forum under 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c) for the dual purpose of soliciting public input on a proposed section 1332 waiver extension request and on the progress of its approved waiver plan;⁴

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

⁴ In the event of an emergent situation, the state may seek to use the flexibilities provided at 31 C.F.R. § 33.118(a) and 45 C.F.R. § 155.1318(a), to modify, in part, the public participation requirements.