

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 20, 2026

VIA ELECTRONIC MAIL: James.McDonald@health.ny.gov

James V. McDonald
Commissioner
New York State Department of Health
Empire State Plaza
Corning Tower
Albany, NY 12237

Dear Commissioner McDonald:

Thank you for your October 20, 2025, letter requesting to terminate New York’s State Innovation Waiver under Section 1332 of the Patient Protection and Affordable Care Act (ACA) (also referred to as a “section 1332 waiver”) and return to the Basic Health Program (BHP) under Section 1331 of the ACA.¹ I am responding on behalf of the Department of Health and Human Services (HHS) and the Department of the Treasury (collectively, “the Departments”).

Per New York’s request, the State is seeking to terminate its section 1332 waiver because New York states that it expects to receive substantially less federal funding for its section 1332 waiver based on anticipated changes in federal pass-through funding due to premium tax credit eligibility changes codified in Public Law 119-21, which the Centers for Medicare & Medicaid Services (CMS) refers to as the “Working Families Tax Cut” (WFTC) legislation. We understand that given the magnitude of anticipated decreases in funding, New York has determined it will be unable to provide state funding to offset program costs. Though the section 1332 waiver was approved through December 31, 2029, the State seeks to terminate the waiver within six months of the January 1, 2026, applicability date of the statutory changes made by section 71302 of the

¹ New York’s currently approved section 1332 waiver plan waives section 36B of the Internal Revenue Code to the extent it would otherwise provide that a month is a “coverage month” (and therefore a premium tax credit (PTC) may be allowed for that month) if an individual residing in New York is under age 65 and has in effect a determination by New York State of Health, New York’s State-based Exchange, that their estimated household income is at or below 250% of the federal poverty level (FPL), as well as section 1402 of the ACA to the extent it would otherwise make New York residents under age 65 and with estimated household income at or below 250% of FPL eligible for cost-sharing reductions for the purposes of enrolling these individuals in the State’s coverage program, the Essential Plan (EP) Expansion, as described in the State’s waiver application. The waiver also allows New York to waive the single risk pool requirement in the individual market under section 1312(c)(1) of the ACA to the extent it would otherwise prohibit including individuals with estimated household income of 200 to 250% of FPL in the individual market single risk pool when establishing the market-wide index rate for the purposes described in the State’s waiver application. The approval of New York’s current waiver plan is effective January 1, 2025, through December 31, 2029. See: <https://www.cms.gov/files/document/1332-ny-waiver-extension-approval-letter-final-signed.pdf>

WFTC legislation. Pursuant to the State's request, the effective termination date for New York's section 1332 waiver would be July 1, 2026.

The Departments have reviewed the request as a request to terminate the State's waiver pursuant to the specific terms and conditions (STCs) governing New York's section 1332 waiver, specifically STC 8. The State has submitted its request to the Departments in writing specifying the reasons for the requested termination and the proposed effective date of the requested termination. While the State submitted its request less than nine months before the proposed effective date of the waiver's termination, the Departments accept the request because the State notified the Departments as soon as it became aware of the expected financial challenges noted above that New York assessed would impact implementation of its waiver and that it was considering termination as a result.

Prior to submitting the request, the State published on its website a notice of its intent to terminate the waiver, along with a phase-out plan.² Per the State's request for a termination, the State provided 30 days for public comment on the notice. The State received 472 comments total, including 18 comments from 53 organizations. The majority of comments submitted by organizations supported the decision to return to New York's BHP, known as the Essential Plan (EP), in order to retain coverage for as many residents as possible. Several commenters provided recommendations for how to transition smoothly back to the BHP while minimizing harm.

The majority of individual commenters opposed terminating the waiver and expressed concerns about their ability to access affordable health coverage without it. These commenters also urged the State to provide alternative coverage options for those impacted by the transition back to the State's BHP. In response to comments, the State recognized the importance of access to health care coverage and noted that it is committed to working with CMS to explore alternate health plan options for the impacted population. The State also noted that it will develop an outreach and education plan to inform impacted consumers of changes to their coverage. The State acknowledged support amongst commenters to revert to the BHP. In response to commenters suggesting the State use the BHP Trust Fund to continue operating one part of the State's section 1332 waiver, the EP Expansion, the State noted that federal law prevents this approach. The State also noted its inability to pursue commenters' suggestions to reduce EP program costs because the State determined that many of the suggested changes would not be permissible under the section 1332 waiver. The State addressed comments regarding the transition from the EP Expansion to BHP by noting its intent to work closely with insurers, request a 90-day Special Enrollment Period (SEP) for EP Expansion members who want to transition to new coverage, take steps to ensure coverage for pregnant and postpartum individuals, and implement outreach and education campaigns aided by certified enrollment assisters.

The Departments have reviewed the State's request and are approving the termination of New York's section 1332 waiver effective July 1, 2026. The January 15, 2025, STCs shall remain in effect until the waiver is terminated. As explained further below, the Departments are approving New York's phase-out plan in part. Under STC 8(b), "[t]he State must obtain the Departments' approval of the phase-out plan prior to the implementation of the phase-out activities. Implementation of phase-out activities must begin no sooner than fourteen (14) calendar days after the Departments' approval of the phase-out plan, unless otherwise directed by the Departments." The Departments are authorizing the State to begin phase-out activities, including

² <https://info.nystateofhealth.ny.gov/sites/default/files/1332%20Termination%20Notice%2010-20-25.pdf>

the State's proposed outreach and eligibility preparation activities and dissemination of individualized notices to EP Expansion members, sooner than 14 calendar days after this approval.

In its termination request and as part of its proposed phase-out plan, the State sought CMS' approval of a 90-day SEP for EP Expansion members who want to transition to new coverage. The Departments acknowledge and support the State's desire for an orderly transition period; however, we believe existing SEP vehicles are sufficient to achieve this goal. Specifically, under 45 CFR § 155.420(c)(2) and (d)(1)(i), the loss of minimum essential coverage (MEC) under the EP Expansion on July 1, 2026, would serve as the triggering event for an SEP that would permit a qualified individual or their dependent to enroll in a qualified health plan (QHP) 60 days before and 60 days after the triggering event. This aligns with how the State currently administers their loss-of-MEC SEP consistent with 45 CFR § 155.420. CMS believes that, with approval to begin phase-out activities immediately after receiving this termination approval, a 120-day total SEP provides enough time for EP Expansion members to learn about upcoming changes and make coverage decisions.

Also, in its termination request and as part of its proposed phase-out plan, the State sought the Departments' approval to use pass-through funding, subject to availability, after the termination's effective date to cover the administrative costs of transitioning EP Expansion members to new coverage and providing cost-sharing reduction subsidies and premium subsidies through the end of 2026. The Departments approve the State's use of pass-through funding, subject to availability, after the termination's effective date to cover administrative costs of transitioning EP Expansion members to new coverage. However, the Departments have determined that providing cost sharing reduction subsidies and premium subsidies after the termination date of the section 1332 waiver are not normal costs associated with an orderly transition and, therefore, do not approve the State's request to use pass-through funding for such subsidies after the section 1332 waiver is terminated on July 1, 2026. In addition, per STC 8(c), "any unused pass-through funding will be recovered. The State will comply with all necessary steps to facilitate the recovery within a prompt timeframe." The Departments will work with the State to recover any unused pass-through funding.

Next Steps

Please send your written confirmation of receipt of this letter and any communications and questions regarding program matters or official correspondence concerning the waiver to Meril.Pothen@cms.hhs.gov or stateinnovationwaivers@cms.hhs.gov.

Sincerely,



Peter Nelson

Deputy Administrator and Director, Center for Consumer Information and Insurance Oversight
Centers for Medicare & Medicaid Services

CC: Kenneth J. Kies, Assistant Secretary, Tax Policy, U.S. Department of the Treasury
The Honorable Kathy Hochul, Governor, State of New York
Danielle Holahan, Executive Director, NY State of Health
Sonia Sekhar, Deputy Director, NY State of Health