



December 9, 2022

Governor Jay Inslee
Office of the Governor
State of Washington
P.O. Box 40002
Olympia, WA 98504-0002

Dear Governor Inslee:

Thank you for your May 13, 2022 submission and June 8, 2022¹ updated submission of Washington's application for its State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (ACA). Washington has requested a waiver in order to expand access to qualified health plans (QHPs), stand-alone qualified dental plans (QDPs), and the state's premium affordability program (Cascade Care Savings) to Washington residents regardless of immigration status. The waiver would be in effect for five years beginning with plan year (PY) 2024. I am pleased to send this letter from the Department of Health & Human Services (HHS), as well as on behalf of the Department of the Treasury (collectively, the Departments).

This letter is to inform you that the Departments, having completed their review of the waiver application, approve Washington's application for its State Innovation Waiver under section 1332 of the ACA (also referred to as a section 1332 waiver). Described below are the specific terms and conditions (STCs) that are enclosed with this letter. The Departments' approval of the waiver is conditioned upon the state's acceptance of these STCs within 30 days of this letter, or by January 8, 2023. This approval is effective for a waiver period of January 1, 2024 through December 31, 2028.

The Departments are granting Washington's waiver application to waive section 1312(f)(3) of the ACA to the extent it would otherwise prohibit enrollment of residents in QHPs and QDPs through the State-based Exchange, *Washington Healthplanfinder*, thereby allowing all qualifying low-income residents, regardless of immigration status, to benefit from the new state premium affordability program.

The Departments remain committed to working with state partners to advance health care coverage policies. Through section 1332 waivers, the Departments aim to assist states with developing health insurance markets that expand coverage, lower costs, and ensure that affordable health coverage is available for their residents. The Departments have determined that this waiver plan satisfies the statutory guardrails (as set forth in sections 1332(b)(1)(A)-(D) of the ACA), and have also determined that implementation of this coverage expansion program will increase enrollment. The Departments have considered public comments in making this

¹ The state also updated its actuarial analysis on August 3, 2022.

determination. During the federal comment period, the Departments received a total of 427 comments, which unanimously strongly supported the state's waiver plan.² The Departments' written responses to comments received during the federal comment period, as well as questions and responses from Washington throughout the review period of the waiver application, will be available online.³

The Departments note that the state's waiver application and the approval of the waiver reflects state and federal law at the time of approval. Moving forward, the state is responsible, under STC 2, to inform the Departments of any change in state law or regulation that could affect the waiver.⁴ Additionally, if there is a change in state or federal law, consistent with the federal regulations and the STCs,⁵ the Departments may request additional information from the state as part of their responsibility to conduct oversight and monitoring to ensure that approved section 1332 waivers continue to meet the statutory guardrails.⁶

The enclosed STCs further define the state's responsibilities with respect to implementation of the waiver and the nature, character, and extent of anticipated federal oversight of the project. The state is encouraged to engage with the Departments early in the process if it is interested in amending or extending its waiver plan. The required information and process may vary based on the complexity of the proposed change or extension. A breach of any of the STCs may lead to termination of Washington's section 1332 waiver.

Departments' Determination

Based on consideration of the analysis and information submitted by the state as part of its waiver application, along with the state's responses to questions from the Departments during the review period, and public comments, the Departments have determined that Washington's waiver plan meets the statutory guardrail requirements outlined in sections 1332(b)(1)(A)-(D) of the ACA.

First, the state's section 1332 waiver is projected to provide coverage that is at least as comprehensive as coverage provided without the waiver. More specifically, the waiver plan will not alter the essential health benefits (EHBs) provided in individual health insurance coverage offered through *Washington Healthplanfinder*.

The state's waiver is also projected to provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided without the waiver. Given that state subsidies under Cascade Care Savings will be available to certain

² Of these comments, 51 were from organizations or groups, and 376 were from individuals.

³ https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html.

⁴ See STC 2 in the enclosed STCs.

⁵ In accordance with STCs 6, 13, 14, and 16 in the enclosed STCs, 31 C.F.R. § 33.120(a)(1) and (f), and 45 C.F.R. § 155.1320(a)(1) and (f).

⁶ See sections 1332(b)(1)(A)-(D) of the ACA.

individuals currently not eligible for premium tax credits (PTC),⁷ and the state is not changing the coverage and cost-sharing protections against excessive out-of-pocket spending provided under federal law, the waiver is projected to improve affordability as compared to the without-waiver baseline scenario.

The Departments also have determined that the state's waiver satisfies the coverage guardrail, meeting the statutory requirement that the waiver is projected to provide coverage to at least a comparable number of state residents as would be provided without the waiver. Compared to the without-waiver baseline, the state has projected that total individual market enrollment under its waiver plan will increase by 1% in PY 2024. By expanding the state subsidy program to newly eligible enrollees who were not previously receiving any financial assistance, the waiver will enable more Washingtonians to purchase affordable, comprehensive health insurance, thereby expanding comprehensive coverage to previously uninsured Washingtonians. Further, in addition to Washington's ongoing outreach efforts, the state is planning an additional annual budget of approximately \$700,000 solely for waiver-specific efforts to increase enrollment in the waiver population. We note that the state can still meet the statutory coverage guardrail even if the actual enrollment impact is smaller than estimated, since state waiver plans are not required to increase enrollment, but rather must provide coverage to a comparable number of people as would receive it absent the waiver in order to meet this statutory guardrail, and the waiver would not be expected to reduce enrollment among any existing group of enrollees.

Finally, the Departments have determined that the waiver is not projected to increase the federal deficit. Overall, the Departments expect that any increase in individual market enrollment as a result of the waiver may be very small compared to the individual market population. Further, because those newly enrolling will face post-subsidy premiums that are higher on average than those faced by existing, federally subsidized enrollees, the Departments do not project at this time that the spending and utilization patterns of those who do enroll in response to Washington's waiver will be sufficiently different from the spending and utilization patterns of existing enrollees to impact premiums. In addition, there are possible, albeit small, offsetting decreases in federal spending on emergency care for some individuals who may newly enroll in individual market coverage through *Washington Healthplanfinder*.

The Departments do not project at this time that Washington's waiver will increase or decrease individual market premiums. As a result, the Departments do not currently project that the waiver will yield federal PTC savings. However, the Departments will continue to assess the waiver's impact on the market during the waiver period.

⁷ Under state law, these state subsidies are only available to residents who purchase a QHP through *Washington Healthplanfinder*. The state subsidy program is for enrollees currently with incomes up to 250% of the Federal Poverty Level (FPL) who are and are not eligible for PTC. Consumers who are newly eligible for Exchange coverage under the waiver will remain ineligible for PTC.

Next Steps

Please send your written acceptance and any communications and questions regarding program matters or official correspondence concerning the waiver to lina.rashid@cms.hhs.gov or stateinnovationwaivers@cms.hhs.gov.

Congratulations. 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 blue ink that reads "Chiquita Brooks-LaSure".

Chiquita Brooks-LaSure

Enclosure

cc: Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Molly Voris, Senior Policy Advisor for Public Health and Health Care, State of Washington
Jim Crawford, Executive Director, Washington Health Benefit Exchange
Joan Altman, Director of Government Affairs and Strategic Partnerships for the Exchange, Washington Health Benefit Exchange
Mandy Weeks-Green, Coverage and Market Strategies Manager, Washington State Health Care Authority

DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS)
U.S. DEPARTMENT OF THE TREASURY
PATIENT PROTECTION AND AFFORDABLE CARE ACT SECTION 1332 STATE
INNOVATION WAIVER
SPECIFIC TERMS AND CONDITIONS

TITLE: Washington Health Benefit Exchange— Patient Protection and Affordable Care Act
Section 1332 Waiver Approval
AWARDEE: Washington Health Benefit Exchange

I. PREFACE

The following are the specific terms and conditions (STCs) for the Washington Health Benefit Exchange’s (hereafter referred to as the “state”) Patient Protection and Affordable Care Act (ACA)⁸ section 1332 State Innovation Waiver to expand access to qualified health plans, stand-alone qualified dental plans, and state affordability programs to Washington residents regardless of immigration status (hereafter referred to as “the waiver” or “the waiver plan”), which has been approved by the U.S. Department of Health & Human Services (HHS) and the U.S. Department of the Treasury (collectively, the Departments). These STCs govern the operation of the waiver by the state. The STCs set forth, in detail, the state’s responsibilities to the Departments related to the waiver. These STCs are effective beginning January 1, 2024, through December 31, 2028, unless the waiver is extended, otherwise amended, suspended, or terminated by the parties in accordance with the applicable processes set forth in and provided by these STCs; however, the Departments reserve the right to amend these STCs when the Departments make the annual determination of the pass-through amount for plan years 2024 through 2028. The state’s waiver plan to waive certain provisions of the ACA, dated May 13, 2022, and updated on June 8, 2022, is specifically incorporated by reference into these STCs, except with regard to any proposal or text in the waiver plan that is inconsistent with the Departments’ approval of the waiver or these STCs.

1. ACA Provisions Waived under Section 1332 State Innovation Waiver (Section 1332 waiver). Section 1312(f)(3) of the ACA is waived to the extent it would otherwise require excluding certain Washington state residents from enrolling in qualified health plans and stand-alone qualified dental plans through the state’s Exchange for the purposes described in the state’s waiver.⁹

2. Changes in State Law and Technical Changes to the Waiver. The state must inform the Departments of any change in state law or regulations that could impact the waiver, including any changes to the requirements of the state waiver plan, or any technical changes to the waiver, occurring after the date of this approval letter, within seven days of any such changes. Technical changes are changes that do not impact the statutory guardrails (as set forth in sections

⁸ The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In these STCs, the two statutes are referred to collectively as the “Patient Protection and Affordable Care Act” or “ACA.”

⁹ See Pg. 11 of the state’s application here: <https://www.wahealthplanfinder.org/content/dam/federal-guidance/WA%20Section%201332%20Waiver%20Application-updated%208-3.pdf>

1332(b)(1)(A)-(D) of the ACA) or any obligations of the state or the Departments, such as changes to eligibility for the Cascade Care Savings program. If the Departments determine that the change in state law or regulation or the change to the state waiver plan is not a technical change but instead would be an amendment, the state must immediately suspend implementation of the change and submit an amendment as set forth in STC 9.

3. Funds to Operate the Waiver. The state waiver plan will be funded through a combination of federal pass-through funding, if applicable, and state funding for the Cascade Care Savings program. The state must ensure sufficient funds are available on an annual basis for the waiver to operate as described in the state's waiver.

4. Compliance with Federal Non-Discrimination Statutes. The state must comply with all applicable federal statutes relating to non-discrimination. These include, but are not limited to, the Americans with Disabilities Act of 1990, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, title I and II of the Genetic Information Nondiscrimination Act of 2008 and section 1557 of the ACA.

5. Compliance with Applicable Federal Laws. Per 31 C.F.R. § 33.120(a) and 45 C.F.R. § 155.1320(a), the state must comply with all applicable federal laws and regulations, unless a law or regulation has been specifically waived. The Departments' State Innovation Waiver authority is limited to requirements described in section 1332(a)(2) of the ACA. Further, section 1332(c) of the ACA states that while the Secretaries of the Departments have broad discretion to determine the scope of a waiver, no federal laws or requirements may be waived that are not within the Secretaries' authority. *See* 77 Fed. Reg. 11700, 11711 (February 27, 2012). Therefore, for example, section 1332 of the ACA does not grant the Departments authority to waive any provision of the Employee Retirement Income Security Act of 1974. The state must also comply with requirements of the Cash Management Improvement Act (CMIA).

6. Changes to Applicable Federal Laws. The Departments reserve the right to amend, suspend, or terminate the waiver, these STCs, or the pass-through funding amount as needed to reflect changes to applicable federal laws or changes of an operational nature without requiring the state to submit a new waiver proposal. The Departments will notify the state at least thirty (30) days in advance of the expected effective date of the amended STCs, if applicable, to allow the state to discuss the changes necessary to ensure compliance with law, regulation, and policy, to allow the state adequate time to come into compliance with state and federal requirements (including rate review and consumer noticing requirements), and to provide comment, if applicable. Changes will be considered in force upon the Departments' issuance of amended STCs. The state must accept the changes in writing within thirty (30) days of the Departments' notification for the waiver to continue to be in effect. The state must, within the applicable timeframes, come into compliance with any changes in federal law or regulations affecting section 1332 waivers, unless the provision being changed has been expressly waived for the waiver period. If any of the waived provision(s) identified in STC 1 are eliminated under federal law, the Departments would re-evaluate the waiver to see if it still meets all of the section 1332 waiver requirements. If the Departments determine that the waiver needs to be suspended or terminated as a result of a change to federal law, the Departments will provide further guidance to the state as to that process.

7. Finding of Non-Compliance. The Departments will review and, when appropriate, investigate documented complaints that the state is failing to materially comply with requirements specified in the state’s waiver and these STCs. In addition, the Departments will promptly share with the state any complaint that they may receive and will notify the state of any applicable monitoring and compliance issues.

8. State Request for Suspension, Withdrawal, or Termination of a Waiver. The state may only request to suspend, withdraw, or terminate all or portions of its waiver plan consistent with the following requirements:

- (a) Request for suspension, withdrawal, or termination: If the state wishes to suspend, withdraw, or terminate all or any portion(s) of the waiver, the state must submit a request to the Departments in writing specifying: the reasons for the requested suspension, withdrawal, or termination; the effective date of the requested suspension, withdrawal or termination; and the proposed phase-out plan (with the summary of comments received, as described below). The state must submit its request and draft phase-out plan to the Departments no less than six (6) months before the proposed effective date of the waiver’s suspension, withdrawal, or termination. Prior to submitting the request and draft phase-out plan to the Departments, the state must publish on its website the draft phase-out plan for a thirty (30) day public comment period and conduct Federal tribal consultation as applicable. The state must include with its request and proposed phase-out plan a summary of each public comment received, the state’s response to the comment and whether or how the state incorporated measures into a revised phase-out plan to address the comment.
- (b) Departments’ approval: The 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.
- (c) Recovery of unused funding: Any unused pass-through funding will be recovered. The state will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

9. State Request for Amendment.

- (a) Definition: For purposes of these STCs and per 31 C.F.R. § 33.130(a) and 45 C.F.R. § 155.1330(a), an amendment is a change to a waiver plan that is not otherwise allowable under these STCs, a change that could impact any of the statutory guardrails, or a change to the program design for an approved waiver. Such potential changes include, but are not limited to, changes to eligibility, coverage, benefits, premiums, out-of-pocket spending, and cost sharing.
- (b) Amendment Request Submission Process: Consistent with 31 C.F.R. § 33.130 and 45 C.F.R. § 155.1330, to amend a waiver the state must comply with the following requirements:

- (1) The state must submit a letter to the Departments notifying them in writing of its intent to request an amendment to its waiver plan(s). The state must include a detailed description of all of the intended change(s), including the proposed implementation date(s), in its letter of intent. The Departments encourage the state to submit its letter of intent at least fifteen (15) months prior to the waiver amendment's proposed implementation date and to engage with the Departments early in its development of a potential waiver amendment. The state may wish to submit this letter of intent more than fifteen (15) months prior to the waiver amendment's proposed implementation date, depending on the complexity of the amendment request and the timeline for implementation, among other factors.
- (2) The Departments will review the state's letter of intent requesting changes to its waiver plan. Within approximately thirty (30) days of the Departments' receipt of the state's letter of intent, the Departments will respond to the state and confirm whether the change requested is a waiver amendment, as well as identify the information the state needs to submit in its waiver amendment request. This written response will also include whether the proposed waiver amendment(s) would be subject to any additional or different requirements consistent with STC 9(c)(7).
 - a. For example, depending on the complexity of the amendment request, scope of changes from the waiver plan, operational/technical changes, or implementation considerations, the Departments may impose requirements similar to those specified in 31 C.F.R. § 33.108(f) and 45 C.F.R. § 155.1308(f) for new section 1332 waiver applications.
- (3) The state should generally plan to submit its waiver amendment request in writing in electronic format, as outlined in STC 9(c), no later than nine (9) months prior to the waiver amendment's proposed implementation date in order to allow for sufficient time for review of the waiver amendment request. Similar to the regulations at 31 C.F.R. § 33.108(b) and 45 C.F.R. § 155.1308(b) for new waiver applications, the state must submit the waiver amendment request sufficiently in advance of the requested waiver amendment implementation date, particularly when the waiver plan or requested amendment could impact premium rates, to allow for an appropriate review and implementation timeframe. Depending on the complexity of the amendment request, the state may want to submit the amendment request earlier than nine (9) months prior to implementation. In developing the implementation timeframe for its waiver amendment request, the state must maintain uninterrupted operations of the Exchange in the state and provide adequate notice to affected stakeholders and issuers of health insurance plans that would be (or may be) affected by the amendment to take necessary action based on approval of the waiver amendment request.
- (4) The Departments reserve the right to deny or withhold approval of a state waiver amendment request based on non-compliance with these STCs or any additional direction and information requests from the Departments, including a failure by the state to submit required reports and other deliverables in a timely fashion.
- (5) The state is not authorized to implement any aspect of the proposed amendment without prior approval from the Secretaries.

(c) Content of Amendment Application: All amendment applications are subject to approval at the discretion of the Secretaries in accordance with section 1332 of the ACA. The state must furnish such information and analysis regarding the proposed waiver amendment that is necessary to permit the Departments to evaluate the request. A waiver amendment request must include the following:

- (1) A detailed description of the requested amendment, including the time period for the proposed amended waiver, impact on the statutory guardrails, the scope of the proposed amendment to the waiver plan—including whether the state seeks to waive any new provisions and the rationale for the waiver—and related changes to the waiver plan elements as applicable, including sufficient supporting documentation;
- (2) An explanation and evidence of the process used by the state to ensure meaningful public input on the proposed waiver amendment request. The state must conduct the state public notice process that is specified for new applications at 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312. It may be permissible for a state to use its annual public forum required 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 waiver amendment request and on the progress of its waiver plan;¹⁰
- (3) 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 waiver amendment request;
- (4) An implementation plan with operational details (if appropriate) to demonstrate that the waiver would maintain uninterrupted operations of the Exchange in the state, and provision of adequate notice for stakeholders and issuers of health insurance plans that would be (or may be) affected by the proposed amendment to take necessary action based on approval of the waiver amendment request;
- (5) An updated actuarial and/or economic analysis demonstrating how the waiver, as amended, will meet the statutory guardrails. Such analysis must identify the “with waiver” 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 current approval period using data from recent experience, as well as a summary of and detailed projections of the change in the “with waiver” scenario;
- (6) An explanation of the estimated impact, if any, of the waiver amendment on pass-through funding, as well as any new proposed uses for pass-through funding if applicable; and
- (7) Any further requested information and/or analysis that is determined necessary by the Departments to evaluate the waiver amendment request.

¹⁰ 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), in part, to modify the public participation requirements. For example, in an emergent situation that impacts or otherwise limits in-person gatherings, a state could request to host its annual public forum or other events intended to solicit public feedback virtually while meeting the other applicable requirements.

10. State Request for Waiver Extension.

- (a) Definition: For purposes of these STCs and per 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, a waiver extension is an extension of an approved waiver under the existing waiver terms.

The waiver extension request and approval process is separate from the waiver amendment request and approval process described in STC 9, with separate timelines and requirements. An extension request can only include an extension of the existing waiver terms, not other changes to the existing waiver plan. If a state also seeks to make substantive changes to its waiver plan along with seeking an extension, the Departments will treat those changes as amendments and the requirements of STC 9 will also apply.

- (b) Extension Request Submission Process: Consistent with 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, to extend the waiver the state must comply with the following requirements:

- (1) The state must inform the Departments if the state will apply for an extension of its waiver at least one (1) year prior to the waiver's end date. The state must submit a letter of intent in electronic format to the Departments to notify them in writing of its intent to request an extension of its waiver plan. The state must include a detailed description of the requested extension period in the letter of intent. The Departments will then review the state's letter of intent request. Within approximately thirty (30) days of the Departments' receipt of the letter of intent, the Departments will respond to the state and confirm whether the extension request will be considered an extension request and, if applicable, whether the request includes changes that would be considered an amendment request subject to the separate process and requirements set forth in STC 9. The Departments' response will also identify the information the state needs to submit in its waiver extension request.
- (2) The state must submit its waiver extension request in writing in electronic format, consistent with the format and manner requirements applicable to initial waiver applications under 31 C.F.R. § 33.108(a) and 45 C.F.R. § 155.1308(a).
- (3) An extension request shall be deemed granted unless the Secretaries, within ninety (90) days after the date of the state's submission of a complete waiver extension request, either deny such request in writing or inform the state in writing with respect to any additional information needed to make a final determination with respect to the request.
- (4) The Departments reserve the right to deny a state's waiver extension request based on non-compliance with these STCs or any additional direction and information requests from the Departments, including a failure by the state to submit required reports and other deliverables in a timely fashion.

- (c) Content of Extension Application: All extension applications are subject to approval at the discretion of the Secretaries in accordance with section 1332 of the ACA. The state must furnish information and analysis regarding the proposed waiver extension that is necessary to permit the Departments to evaluate the request. In addition to the periodic reports required by 31 C.F.R. § 33.124 and 45 C.F.R. § 155.1324, the Departments may require additional data and information to be submitted to review the extension request in

accordance with 31 C.F.R. § 33.120(f)(2) and 45 C.F.R. § 155.1320(f)(2). A waiver extension request may be required to include the following information:

- (1) Updated economic or actuarial analyses for the requested extension period in a format and manner specified by the Departments;
- (2) Preliminary evaluation data and analysis from the existing waiver;
- (3) Evidence of sufficient authority under state law(s) to meet the requirement in section 1332(b)(2)(A) of the ACA for purposes of pursuing the waiver extension request;
- (4) An explanation of the process followed by the state to ensure meaningful public input on the proposed waiver extension request at the state level. It may be permissible for the state to 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 waiver extension request and on the progress of its waiver plan;¹¹ and
- (5) Other information as requested by the Departments that is necessary to reach a decision on the waiver extension request.

The Departments will identify the information the state needs to submit as part of its waiver extension request in its response to the state's letter of intent.

- (d) Temporary Extension of Waivers: The Departments may extend an existing waiver program on a temporary basis for an additional year while a waiver extension request is under review, without regard to the date when the extension application was submitted.
- (e) End of Waiver Period: If the state does not submit an extension request before the end of the waiver period consistent with STC 10(b)(1) and (2), the Departments will provide guidance on wind-down of the state's waiver.

11. Reporting. The state must submit quarterly and annual reports as specified in 31 C.F.R. § 33.124 and 45 C.F.R. § 155.1324 starting January 1, 2024.¹²

Annual Reports: The state must submit a draft annual report to the Departments within ninety (90) days after the end of the first waiver year and each subsequent year that the waiver is in effect. The state will publish the draft annual report on the state's public website within thirty (30) days of submission to the Departments. Within sixty (60) days of receipt of comments from the Departments on the report, the state must submit to the Departments the final annual report for the waiver year, summary of the comments, and all public comments received as part of the post-award forum process. The state must publish the final annual report on the state's public website within thirty (30) days of approval by the Departments.

Report Contents: Each such annual report must include:

¹¹ *Ibid.*

¹² Information shared with the Departments for the purposes of eligibility for coverage, including financial assistance for such coverage, will remain protected under applicable data protection standards. Any additional information or data on persons newly eligible for Exchange coverage under the waiver will be provided to the Departments in the aggregate and will be used **only** for the purposes of oversight of the waiver. None of this information or data will be used for immigration enforcement.

- (a) The progress of the waiver;
- (b) Data and metrics sufficient to show compliance and assist evaluation of the waiver's compliance with sections 1332(b)(1)(A) through (D) of the ACA:
 - (1) Projected and actual individual market enrollment in the state, both through the Marketplace and off-Marketplace.
 - (2) Projected and actual average individual market premium rate (i.e., total individual market premiums divided by total member months of all enrollees).
 - (3) Projected and actual Second Lowest Cost Silver Plan (SLCSP) premium under the waiver and an estimate of the SLCSP premium as it would have been without the waiver, for a representative consumer (e.g., a 21-year old non-smoker) in each rating area.
- (c) A summary of the annual post-award public forum, held in accordance with 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), including all public comments received at such forum regarding the progress of the waiver and action taken in response to such concerns or comments;
- (d) Technical changes to the state's waiver plan, including the funding level the program will be operating at for the next plan year, or other waiver plan changes as specified in STC 2.
- (e) Notification of changes to state law or regulations that may impact the waiver as specified in STC 2.
- (f) The amount of state funding from the Cascade Care Savings program, or other funding to fully fund or support the waiver program for the reporting year.
- (g) Other information the Departments determine is necessary to calculate pass-through amounts or to evaluate the waiver.

Payment Schedule: If appropriate, the state will inform the Departments of any updates to the state's waiver program payment schedule by January 1, 2024.

Quarterly and Other Reports: Under 31 C.F.R. § 33.120(b), 31 C.F.R. § 33.124(a), 45 C.F.R. § 155.1320(b), and 45 C.F.R. § 155.1324(a), the state must conduct periodic reviews related to the implementation of the waiver. The state must report on the operation of the waiver quarterly, including, but not limited to reports of any ongoing operational challenges and plans for and results of associated corrective actions, no later than sixty (60) days following the end of each calendar quarter. The state can submit its annual report in lieu of the fourth quarter report. The state must also provide an analysis on utilization under the waiver by January 1, 2026 to the extent available.

Additionally, the State must provide a periodic report by June 30 of each plan year during the waiver period, starting with the first plan year under the waiver, that includes data on effectuated enrollment for January of the applicable plan year through the most recent month for which data are available. Specifically:

- (1) The number of effectuated Exchange enrollees, by reported income,¹³ in each of the following categories:
 - i. Enrollees with APTC
 1. Enrollees with Cascade Care Savings subsidies
 2. Enrollees without Cascade Care Savings subsidies
 - ii. Enrollees without APTC
 1. Enrollees that are newly eligible for Exchange coverage under the waiver
 - a. Enrollees with Cascade Care Savings subsidies
 - b. Enrollees without Cascade Care Savings subsidies
 2. Enrollees that are not newly eligible for Exchange coverage under the waiver
 - a. Enrollees with Cascade Care Savings subsidies
 - b. Enrollees without Cascade Care Savings subsidies
- (2) For each of the above categories of enrollees, the average APTC received, the average Cascade Care Savings subsidy received, and the average premium net of APTC and Cascade Care Savings subsidies.

In addition, starting with the 2024 plan year and for each plan year thereafter during the waiver period, by September 15 of the preceding year or once a state has finalized rates for the applicable plan year, whichever is later, the state will provide a periodic report with the following information to the Departments:

- (a) The final SLCSP rates for individual health insurance coverage for a representative individual (e.g., a 21-year-old non-smoker) in each rating area or service area (if premiums vary by geographies smaller than rating areas) for the applicable plan year that are actuarially certified. Also include the actuarial memoranda;
- (b) The estimate of what the final SLCSP rates for individual health insurance coverage for a representative individual in each rating area or service area (if premiums vary by geographies smaller than rating areas) would have been absent approval of this waiver for the applicable plan year, that are actuarially certified. The state must include with this information the methods and assumptions the state used to estimate the final SLCSP rates and state's estimate of what the final SLCSP rates would have been absent approval of the waiver for each rating area or service area absent approval of this waiver. Also include the actuarial memoranda;
- (c) From each issuer, the estimate of the total amount of all premiums expected to be paid for individual health insurance coverage for the applicable plan year;
- (d) From each issuer, the estimate of the total premiums that would have been expected to be paid for individual health insurance coverage for the applicable plan year without the waiver;

¹³ Unless otherwise specified, enrollment data should be reported for each of the following income categories: $\leq 100\%$ of FPL, $> 100\%$ and $\leq 138\%$ of FPL, $> 138\%$ of FPL and $\leq 150\%$ of FPL, $> 150\%$ of FPL and $\leq 200\%$ of FPL, $> 200\%$ of FPL and $\leq 250\%$ of FPL, and $> 250\%$ of FPL.

- (e) From each issuer, the estimate of the total amount of all medical spending expected to be paid for individual health insurance enrollees for the applicable plan year, along with any underlying analyses;
- (f) From each issuer, the estimate of the total amount of all medical spending that would have been expected to be paid for individual health insurance enrollees for applicable plan year without the waiver, along with any underlying analyses;
- (g) The state specific age curve premium variation for the current and upcoming plan year;
- (h) Reports of the estimated total state subsidy program reimbursements for the upcoming plan year;
- (i) Reports of the total enrollment estimates for individual health insurance coverage, both with and without the waiver for the upcoming plan year;
- (j) An explanation of why the experience for the upcoming plan year may vary from previous estimates and how assumptions used to estimate the impact have changed. This includes an explanation of changes in the estimated impact of the waiver on aggregate premiums, the estimated impact to the SLCS rates, and the estimated impact on enrollment. The state should also explain changes to the estimated state subsidy program estimates relative to prior estimates; and
- (k) Any other information or data requested by the Departments.

Operational Report: In addition, the state must submit a report to the Departments that details that project timeline for implementation of the waiver and associated milestones, within 90 days of waiver approval. The state must also comply with operational readiness reviews and open enrollment readiness reviews as required by the Departments.

12. Post Award Forum. Per 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), within six (6) months of the waiver's effective date and annually thereafter, the state will afford the public an opportunity to provide meaningful comment on the progress of the waiver.¹⁴ The state is required to publish the date, time, and location of the public forum in a prominent location on the state's public web site at least thirty (30) days prior to the date of the planned public forum. Per 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), the state must also include a summary of this forum as part of the quarterly report for the quarter in which the forum was held and the annual report as required under 31 C.F.R. § 33.124 and 45 C.F.R. § 155.1324 and as specified in STC 11.

¹⁴ In the event of an emergent situation, the state may seek to use the flexibilities provided at 31 C.F.R. § 33.120(c)(2) and 45 C.F.R. § 155.1320(c)(2), to modify, in part, post award public notice procedures. For example, in an emergent situation that impacts or otherwise limits in-person gatherings, a state could request to host the post award forum virtually while meeting the other applicable requirements.

13. Monitoring Calls. The state must participate in monitoring calls with the Departments that are deemed necessary by the Departments. The purpose of these monitoring calls is to discuss any significant actual or anticipated developments affecting the waiver. Areas to be addressed include the impact on the statutory guardrails set forth under sections 1332(b)(1)(A) – (D) of the ACA and state legislative or policy changes. The Departments will update the state on any federal policies and issues that may affect any aspect of the waiver. The state and the Departments will jointly develop the agenda for the calls. It is anticipated that these calls will occur at least semi-annually.

14. Federal Evaluation. The Departments will evaluate the waiver using federal data, state reporting, and the application itself to ensure that the Secretaries can exercise appropriate oversight of the approved waiver.¹⁵ Per 31 C.F.R. § 33.120(f) and 45 C.F.R. § 155.1320(f), if requested by the Departments, the state must fully cooperate with the Departments or an independent evaluator selected by the Departments to undertake an independent evaluation of any component of the waiver. As part of this required cooperation, the state must submit all requested data and information to the Departments or the independent evaluator. The Departments may charge the state for evaluation costs to the federal government.

15. Pass-through Funding. Under section 1332(a)(3) of the ACA, pass-through funding is based on the amount of premium tax credits (PTC) that would have been provided to individuals under section 36B of the Internal Revenue Code in the state absent the waiver, but that will not be provided under the state’s waiver, reduced, if necessary, to ensure deficit neutrality as required by section 1332(b)(1)(D) of the ACA. The state will receive pass-through funding for the purpose of implementing the waiver, including administration of the waiver, when the requirements described below are met.

If the Departments determine that pass-through funding is warranted based on the Departments’ analysis of preliminary data gathered from the State’s reporting described in STC 11 and more detailed data requested thereafter, pass-through funding reporting would begin. If this determination is made, starting with the relevant plan year and for each plan year thereafter during the waiver period, by September 15 of the preceding year or once a state has finalized rates for the applicable plan year, whichever is later, the state will provide information that the Departments deem necessary to precisely calculate the state’s pass-through funding, and the Departments will revise these STCs to specify the conditions applicable to the state’s use of such funding.

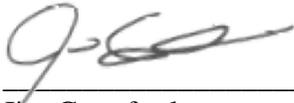
16. The Departments’ Right to Amend, Suspend, or Terminate. Consistent with 31 C.F.R. § 33.120(d) and 45 C.F.R. § 155.1320(d), the Departments reserve the right to amend, suspend, or terminate the waiver (in whole or in part) at any time before the date of expiration if the Departments determine that the state has materially failed to comply with these STCs, or if the state fails to meet the statutory guardrails.

¹⁵ Information shared with the Departments for the purposes of eligibility for coverage, including financial assistance for such coverage, will remain protected under applicable data protection standards. Any additional information or data on persons newly eligible for Exchange coverage under the waiver will be provided to the Departments in the aggregate and will be used **only** for the purposes of oversight of the waiver. None of this information or data will be used for immigration enforcement.

- (a) The Departments will promptly notify the state in writing of the determination and the reasons for the amendment, suspension, or termination, together with the effective date.
- (b) In the event that all of or a portion of the waiver is suspended or terminated by the Departments, federal funding available after the effective date of the suspension, or termination will be limited to normal closeout costs associated with an orderly suspension or termination including service costs during any approved transition period and administrative costs of transitioning participants, as described in 31 C.F.R. § 33.120(e) and 45 C.F.R. § 155.1320(e).
- (c) The Departments will recover unused pass-through funding. The state must comply with all necessary steps to facilitate the recovery of such amounts by the Departments within a prompt timeframe.

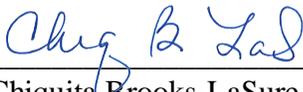
17. State Form 1095 Reporting to the Internal Revenue Service (IRS).

The State will modify certain elements of information reporting to the IRS as the IRS deems necessary to administer the waiver. These modifications include changes to reporting on IRS Form 1095 (both electronic reporting to the IRS and copies furnished to individuals) to exclude information related to enrollees who are newly eligible for Exchange coverage under the waiver.



Jim Crawford
Interim Executive Director
Washington Health Benefit Exchange

Date: 12.16.2022



Chiquita Brooks-LaSure
Administrator
Center for Medicare & Medicaid Services

Date: December 9, 2022



Lily Batchelder
Assistant Secretary for Tax Policy
U.S. Department of the Treasury

Date: January 3, 2023