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: State of New Jersey— Patient Protection and Affordable Care Act Section 1332 Waiver Approval
AWARDEE: The State of New Jersey

I. PREFACE

The following are the specific terms and conditions (STCs) for the State of New Jersey's ("the state") Patient Protection and Affordable Care Act (PPACA) section 1332 State Innovation Waiver ("the waiver"), 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 during the term of the waiver, which is January 1, 2019, through December 31, 2023. Accordingly, these STCs are effective beginning January 1, 2019, and will terminate on December 31, 2023, unless the waiver is extended as 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 2020 through 2023. The state's application to waive certain provisions of the PPACA, dated July 2, 2018, is specifically incorporated by reference into these STCs, except with regard to any proposal or text in the application that is inconsistent with the Departments' approval of the waiver or these STCs.

1. PPACA Provisions Waived under Section 1332 State Innovation Waiver. Section 1312(c)(1) of the Patient Protection and Affordable Care Act (P.L. 111–148) is waived to the extent it would otherwise require excluding total expected state reinsurance payments when establishing the market wide index rate for the purposes described in the state's application.

2. Changes in State Law and the Reinsurance Program. The New Jersey Health Insurance Premium Security Plan administered by the Individual Health Coverage Board (IHC), in consultation with the New Jersey Department of Banking and Insurance is a state-operated reinsurance program which aims to reduce premiums for all New Jerseyans in the individual market. The IHC will reimburse qualifying individual health insurers for a percentage of an enrollee's claims between an attachment point and a cap. The New Jersey Health Insurance Premium Security Plan is administered by the IHC in consultation with the New Jersey Department of Banking and Insurance as established in the New Jersey Health Insurance Premium Security Act, P.L.2018, c.24. The IHC must inform the Departments of any change in New Jersey state law or regulations that would impact the waiver, including any changes to the requirements to the New Jersey Health Insurance Premium Security Plan under the New Jersey Health Insurance Premium Security Act. The state must report any changes in state law occurring after the date of this approval letter within 30 days of any such changes.

In addition, the state must report any changes to the New Jersey Health Insurance Premium Security Plan, such as changes to the approved payment parameters for New Jersey Health Insurance Premium Security Plan reimbursement. Consistent with the waiver application, the State of New Jersey and the Department of Banking and Insurance are responsible for any reconciliation of reinsurance payments that New Jersey wishes to make to account for any duplicative reimbursement through the New Jersey Health Insurance Premium Security Plan for the same high cost claims reimbursed through the HHS-operated risk adjustment program.

3. Legislation Authorizing and Appropriating Funds to the New Jersey Health Insurance Premium Security Plan. The state must ensure sufficient funds, on an annual or other appropriate basis, for the New Jersey Health Insurance Premium Security Plan to operate as described in the state's waiver application.

4. Compliance with Federal Non-Discrimination Statutes. The state must comply with all applicable federal statutes relating to non-discrimination. These include 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 PPACA.

5. Compliance with Applicable Federal Laws. Per 31 CFR §33.120(a) and 45 CFR §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 PPACA. Further, section 1332(c) of the PPACA states that while the Secretaries 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 FR 11700, 11711 (February 27, 2012). Therefore, for example, section 1332 of the PPACA does not grant the Departments authority to waive any provision of the Employee Retirement Income Security Act. The state must, within the applicable timeframes, come into compliance with any changes in federal laws or regulations affecting section 1332 waivers, unless the provision being changed has been expressly waived. The state will 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, STCs, and 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 30 days in advance of the expected implementation date of the amended STCs to allow the state to discuss the changes necessary to ensure compliance with law, regulation, and policy, to allow the state adequate time to comply with state and federal regulatory requirements, including rate review and consumer noticing requirements, and to provide comment. Changes will be considered in force upon the Departments' issuance of the amended STCs. The state must accept the changes in writing within 30 days of the Departments' notification for the waiver to continue to be in effect.

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 waiver application and these STCs. In addition, the Departments

will promptly share with the state any complaint that they have received and 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 suspend or request withdrawal of all or portions of a waiver plan consistent with the following requirements:

a) Request for suspension, withdrawal, or termination: If the state wishes the Departments to suspend or terminate the waiver, or to withdraw a portion 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 comment summary 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 30-day public comment period and conduct Federal tribal consultation. 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) 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 be no sooner than 14 days after the Departments' approval of the phase-out plan.

c) Unused pass-through funding will be recovered. The state will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

9. Waiver Extension Request. The state must inform the Departments as to whether the state will apply for continuation of the waiver one year prior to the waiver's end date. The Departments and the state will engage in further discussions to develop guidelines and define next steps for phase-out or continuation of the waiver. If the state does not apply for an extension of the waiver, the Departments will provide guidance on the wind-down of the state's waiver.

10. Reporting: The state will submit quarterly and annual reports as specified in 31 CFR §33.124 and 45 CFR §155.1324. Each such annual report must include:

- The progress of the section 1332 waiver;
- Data sufficient to show compliance with section 1332(b)(1)(A) through (D) of the PPACA;
- A summary of the annual post-award public forum, held in accordance with 31 CFR §33.120(c) and 45 CFR §155.1320(c), including all public comments received at such forum regarding the progress of the section 1332 waiver and action taken in response to such concerns or comments; and

- Other information the Departments determine is necessary to calculate pass-through amounts or to evaluate the waiver.

The state must submit a draft annual report to the Departments within 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 30 days of submission to the Departments. Within 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 comments received. The state must publish the final annual report on the state's public web site within 30 days of approval by the Departments.

The annual reports must include the following:

1) Metrics to assist evaluation of the waiver's compliance with the statutory requirements in section 1332(b)(1):
    a. Actual individual market enrollment in the state.
    b. Actual average individual market premium rate (i.e., total individual market premiums divided by total member months of all enrollees).
    c. The 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.

2) Changes to the New Jersey Health Insurance Premium Security Plan including the funding level the program will be operating at for the next plan year, or other program changes as specified in STC 2.

3) Notification of changes to state law that may impact the waiver as specified in STC 2.

4) Reporting of:
    a. Federal pass-through funding spent on reinsurance claim payments to issuers from the New Jersey Health Insurance Premium Security Plan and/or operation of the reinsurance program.
    b. The unspent balance of federal pass-through funding for the reporting year, if applicable.

5) The amount of state funding from general revenue funds and assessments available to fully fund the New Jersey Health Insurance Premium Security Plan for the reporting year.

6) A description of any incentives for providers, enrollees, and plan issuers to continue managing health care cost and claims for individuals eligible for reinsurance.

7) A report on the reconciliation (if any) of reinsurance payments that are duplicative of reimbursement through the HHS-operated risk adjustment program high-cost risk pooling mechanism. The report should include the New Jersey Health Insurance Premium Security Plan reinsurance payment (before reconciliation) for high-cost claims to issuers who also receive payment through the HHS risk adjustment program under the high-cost

risk pooling mechanism, the risk adjustment amount paid by HHS for those claims, and the reinsurance true-up amount applied.

Payment Schedule: The state will inform the Departments of the New Jersey Health Insurance Premium Security Plan payment schedule by January 1, 2019.

Quarterly and Other Reports: Under 31 CFR §33.120(b), 45 CFR §155.1320(b), and 45 CFR §155.1324(a), the state must conduct periodic reviews related to the implementation of the waiver. The state will submit a report to the Departments on the operation of the New Jersey Health Insurance Premium Security Plan, including the plan for processing claims, by February 28, 2019. Thereafter, 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 60 days following the end of each calendar quarter. The state can submit their annual report in lieu of their fourth quarter report.

11. Post Award Forum. Per 31 CFR §33.120(c) and 45 CFR §155.1320(c), within six 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. 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 30 days prior to the date of the planned public forum. 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 CFR §33.124 and 45 CFR §155.1324 as specified in STC 10.

12. Monitoring Calls. The state must participate in monitoring calls with the Departments that are deemed necessary by the Departments. The purpose of these calls is to discuss any significant actual or anticipated developments affecting the waiver. Areas to be addressed include the impact on the regulatory criteria discussed above 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.

13. Federal Evaluation. The Departments will evaluate the waiver using federal data, state reporting, and the application itself to ensure that the Secretaries of the Departments can exercise appropriate oversight of the approved waiver. Per 31 CFR §33.120(f) and 45 CFR §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 will consider the evaluation costs to the federal government in the deficit neutrality assessment and, if necessary, take them into account in the pass-through funding calculation.

14. Pass-through Funding. Under section 1332(a)(3) of the PPACA, the state will be entitled to funding 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 of New Jersey absent the waiver, but that will not be provided under the waiver, reduced, if necessary, to ensure deficit

neutrality as required by the section 1332(b)(1)(D). The Departments have evaluated the estimates in the application for a pass-through amount for the period of the waiver. The state will receive pass-through funding for the purpose of implementing the state plan under the waiver. Pass-through amounts will be made available in advance of New Jersey Health Insurance Premium Security Plan payments to the insurer(s) and no later than April of the applicable calendar year.

Starting with the 2019 plan year and for each plan year thereafter, on or before September 15th of the year proceeding the plan year, the state will provide to the Departments: (1) the final second lowest cost silver plan (SLCSP) rates for a representative individual (e.g. a 21 year old non-smoker) in each rating area and (2) the state's estimate of what the final SLCSP rates for a representative individual in each rating area would have been absent approval of this waiver. By the same dates, the state also will provide (3) the total amount of all premiums expected to be paid in the non-group market for the plan year and (4) what total premiums would have been for the plan year without the waiver. The state will include with this information the methods and assumptions the state used to estimate the final SLCSP rates for each rating area absent approval of this waiver.

The amount of pass-through funding for plan year 2019 will be communicated to the state no later than October 31, 2018, conditional on receipt of items 1 through 4 in the paragraph above by the date specified above, and subject to a final administrative determination by the Department of Treasury prior to payment. The pass-through amount for plan years 2020 through 2023 will be calculated by the Departments annually (per PPACA section 1332(a)(3)) and reported to the state not later than October 31 of the preceding year, conditional on receipt of the SLCSP premium and total premium information (items 1 through 4 above) by September 15.

The pass-through funds cannot be obligated by the state prior to the waiver effective date. The state agrees to use the full amount of pass-through funding for purposes of implementing the state's plan as approved by the Departments, including implementing the IHC for 2019 and future years. Moreover, to the extent pass-through funding exceeds the amount necessary for the reinsurance program to cover payments the for individual claim payments to issuers under the IHC and/or operation of the reinsurance program, the remaining funds must be carried forward and used for purposes of implementing the state's plan under the waiver, such as making reinsurance payments in the next calendar year.

If the waiver is not extended, unused pass-through funds will be recovered promptly following the end of the approved waiver period, December 31, 2023. The state will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

15. The Departments' Right to Amend, Withdraw, Terminate or Suspend. Under 31 CFR §33.120(d) and 45 CFR §155.1320(d), the Departments reserve the right to amend, withdraw, terminate, or suspend 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 specific statutory requirements or "guardrails" related to coverage, affordability, comprehensiveness, or deficit neutrality.

a) The Departments will promptly notify the state in writing of the determination and the reasons for the suspension or termination, together with the effective date.

b) In the event that all or a portion of the waiver is terminated or suspended by the Departments or if all or a portion of the waiver is withdrawn, federal funding available after the effective date of the termination, suspension, or withdrawal will be limited to normal closeout costs associated with an orderly termination, suspension or withdrawal, including service costs during any approved transition period and administrative costs of transitioning participants, as described in 31 CFR §33.120(e) and 45 CFR §155.1320(e).

c) Unused pass-through funding will be recovered. The state will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

Marlene Caride, Commissioner, New Jersey Department of Banking and Insurance

State of New Jersey

Date: 9/7/18

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health & Human Services

Date: OCT - 5 2018

David Kautter
Assistant Secretary for Tax Policy
U.S. Department of the Treasury

Date: 9/10/18