



COLORADO

Department of
Regulatory Agencies

Division of Insurance

Lina Rashid and Michelle Koltov
Center for Consumer Information and Insurance Oversight
U.S. Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

July 8, 2021

Dear Ms. Rashid and Ms. Koltov:

By November 30th, 2021, the State of Colorado intends to submit an amendment to the Affordable Care Act Section 1332 State Innovation Waiver extension previously submitted by the Colorado Division of Insurance on April 30, 2021. Colorado House Bill 21-1232 (HB21-1232), which became law this spring, will expand access to high quality, affordable health insurance for individuals and small businesses in Colorado at premiums up to 15% lower than currently offered. These premium reductions will create federal premium tax credit savings. Colorado intends to submit a 1332 Waiver amendment to use pass-through savings to further expand access to high quality, affordable coverage. The amendment would be implemented starting in January 2023.

On April 30, the State of Colorado submitted a Section 1332 State Innovation Waiver extension application to extend our state's current reinsurance program an additional five years. This waiver requests that Section 1312(c)(1) be waived for the period of 2022 through 2026. The currently pending waiver extension application does not make significant changes to the reinsurance program, and the program continues to adhere to the guardrails established by Section 1332, as well as principles laid out in guidance from the Centers for Medicare and Medicaid Services (CMS).

On June 16th, Governor Polis signed HB21-1232 into law, creating the Colorado Option. This legislation requires the Division of Insurance to design a standardized plan that all health insurance carriers in the individual and small group markets in Colorado must offer. It also gives the Colorado Division of Insurance the authority to amend the current 1332 State Innovation Waiver extension application currently under review by the federal government in order to capture additional federal premium tax credit savings created by the Colorado Option. These savings will begin in 2023.

By November 30th, 2021, Colorado will seek to amend our state's currently proposed Section 1332 State Innovation Waiver. Under Colorado's waiver proposal and in accordance with HB12-1232, all standardized plans will be required to be offered at premiums 15% lower than 2021 rates in 2025. If plans do not meet the premium reduction targets in the law, the Division of Insurance can, after appropriate rate review and rate hearings, require health insurance plans to reimburse providers at



particular rates and ensure that those providers participate in these standardized plans. If the waiver amendment is not approved, health coverage in Colorado will be less affordable and we will enroll fewer people in coverage than under the Colorado Option waiver plan.

The waiver amendment will continue to adhere to the guardrails established by Section 1332, as well as principles laid out in the latest guidance from the Centers for Medicare and Medicaid Services (CMS). The amendment will not affect other provisions of the ACA.

Consistent with the President's Executive order 14009 "Executive Order on Strengthening Medicaid and the Affordable Care Act," the Colorado Option will strengthen the Affordable Care Act in Colorado. The Colorado Option requires new standardized plans to meet and exceed existing ACA requirements (EHBs, metal tiers, network adequacy, etc.) and be offered at a lower premium. We expect the lower premiums to increase the number of Coloradans with ACA-compliant coverage. Federal pass-through savings from the 1332 State Innovation Waiver will allow Colorado to offer these plans to individuals who may not otherwise qualify for federal premium tax credits, expanding coverage to even more residents.

Consistent with the President's Executive order 13985, "On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" (EO 13985), the Colorado Option will be specifically designed to reduce racial health disparities and improve racial health equity. Colorado Option plans must have a network that is "culturally responsive and, to the greatest extent possible, reflects the diversity of its enrollees in terms of race, ethnicity, gender identity, and sexual orientation in the area that the network exists" (HB21-1232). The Colorado Option's standardized plan benefit design must also be "designed to improve racial health equity and decrease racial health disparities through a variety of means" including consumer cost sharing and benefit design that will achieve these goals. The law also requires that any savings from an approved 1332 State Innovation Waiver be used to expand coverage to individuals and communities who may not otherwise be eligible for federal premium tax credits, but otherwise may lack access to affordable, quality health coverage options.

We are happy to have the opportunity to build upon Colorado's successful Section 1332 State Innovation Waiver program through an amendment that incorporates federal premium tax credit savings from the Colorado Option. As you suggest in the preamble to your recent 1332 State Innovation Waiver rule changes, we look forward to engaging with the federal government early and often as we develop this amendment. Our existing program has reduced premiums for thousands of Coloradans and the Colorado Option will build upon that success with continued federal support. We intend to submit our waiver amendment by November 30, 2021.

Sincerely,



Michael Conway
Commissioner



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



October 4, 2021

VIA ELECTRONIC MAIL: michael.conway@state.co.us

Michael Conway
Commissioner
Colorado Division of Insurance
1560 Broadway, Suite 850
Denver, CO 80202

Dear Commissioner Conway:

Thank you for your July 8, 2021 letter of intent (LOI) to apply for an amendment to Colorado'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 Departments acknowledge that the state informed the Departments of the state's intent to apply for an amendment to the waiver at least fifteen months prior to the waiver amendment's proposed implementation date. The Departments confirm that Colorado's anticipated section 1332 waiver application, as described below, may be submitted and will be reviewed as a waiver amendment request. The requirements for the state's waiver amendment application are enclosed with this letter. If the amendment is approved, the Departments may determine the waiver amendment will be subject to additional or revised requirements, which will be provided in the amendment STCs.

Colorado's currently approved waiver of the ACA requirement for the single risk pool contained in ACA section 1312(c)(1)¹ allows the state to operate a state-based reinsurance program for the individual health insurance market from January 1, 2022 through December 31, 2026. Under its approved waiver extension,² the state aims to continue implementing the reinsurance program under its approved section 1332 waiver to keep down individual market premium rates and ensure consumers have as much choice as possible in their health insurance coverage. As described in the July 8, 2021 LOI, Colorado seeks to amend its currently approved section 1332

¹ Colorado's currently approved waiver waives the individual market single risk pool requirement 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 approved waiver plan.

² The Departments approved Colorado's waiver extension request on August 13, 2021 which is effective January 1, 2022 through December 31, 2026.

waiver in order to implement the Colorado Option beginning in plan year 2023, for which the Division of Insurance is charged with designing a standardized plan that all health insurance

carriers in the individual and small group markets in the state must offer. The state also contends that the Colorado Option will reduce the premium of the second lowest cost silver plan in Colorado and thereby reduce federal spending per enrollee on the Premium Tax Credit (PTC), which would allow the state to receive the additional PTC savings created by the Colorado Option as part of the state's proposed amended section 1332 waiver, beginning in 2023, as pass-through funding.

A waiver amendment is a change to the existing waiver terms 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 Colorado has indicated it would like to change features of its waiver plan, the Departments have determined this to be a substantive change in program design that is not otherwise allowable under the state's existing STCs. As such, the Departments confirm that Colorado may proceed with submitting an application for a waiver amendment if the state wishes to pursue making this change. The Departments note that, as indicated in the LOI, Colorado intends to submit its waiver amendment application by November 30, 2021; the Departments encourage the state to adhere to this timeframe, as it will ensure that the waiver amendment application is submitted sufficiently in advance of the requested waiver effective date,³ and allow for sufficient time for the Departments to review the application.

The enclosed document further outlines the application requirements for the state's waiver amendment. The state is encouraged to engage with the Departments, as the required information and process may vary based on the complexity of the proposed change. Once the Departments receive the state's waiver amendment 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 amendment without prior written approval by the Departments. This letter does not constitute any pre-determination or intent to approve the state's proposed amendment 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, Michelle Koltov at Michelle.Koltov@cms.hhs.gov, or stateinnovationwaivers@cms.hhs.gov.

³ Ideally the waiver amendment application would be submitted no later than the first quarter of the year prior to the year the amendment would take effect (plan year 2023).

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 fluid and cursive, with the first name "Ellen" and the last name "Montz" clearly distinguishable.

Ellen Montz
Director
Center for Consumer Information and Insurance Oversight (CCIIO)

Cc: Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
Jared Polis, Governor, State of Colorado

Enclosure

Specific Requirements for Colorado's Waiver Amendment Application

The Departments will review Colorado'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. Colorado's waiver amendment application must include the following:

- (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; and
 - g. Sufficient supporting documentation.

- (2) An explanation and evidence that the state has conducted the state public notice process⁴ 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

⁴ Recognizing that barriers may exist for states during the public health emergency for COVID-19, please see additional flexibilities available: Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Interim Final Rule, 85 FR 71142 at 71176. Also see 31 C.F.R. § 33.118 and 45 C.F.R. § 155.1318.

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.