

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



May 24, 2024

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

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

Dear Acting Commissioner McDonald:

Thank you for your April 26, 2024, letter of intent (LOI) to apply for an amendment to New York'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 and Human Services (HHS), as well as on behalf of the Department of the Treasury (collectively, the Departments).

The Departments confirm that New York's anticipated section 1332 waiver amendment 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 specific terms and conditions (STCs).

New York's currently approved waiver of section 36B of the Internal Revenue Code (IRC) and sections 1402 and 1312(c)(1) of the ACA¹ allows the state to operate a new coverage program,

¹ New York's currently approved waiver waives section 36B of the IRC to the extent it would otherwise provide that a month is a "coverage month" (and therefore a premium tax credit may be allowed for that month) if an individual residing in New York is under age 65 and has in effect a determination by the 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 incomes at or below 250% of FPL eligible for cost-sharing reductions, for the purposes of enrolling these individuals in the state's new coverage program, the Essential Plan (EP) Expansion. The state's currently approved waiver also waives 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 incomes 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 section 1332 waiver application.

the Essential Plan (EP) Expansion, from April 1, 2024, through December 31, 2028.² As described in the April 26, 2024, LOI, New York seeks to amend its currently approved section 1332 waiver in order to expand the affordability programs under its waiver plan to provide new, state-based cost-sharing subsidies for certain enrollees on the state-based health insurance exchange (the Exchange).

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. New York has indicated it would like to expand the affordability programs under its waiver plan to include new, state-based subsidies for certain Exchange enrollees. The change in program design is a substantive change and is not otherwise allowable under the state's existing STCs. As such, the Departments confirm that New York may proceed with submitting an application for a waiver amendment if the state wishes to pursue making this change.

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 stateinnovationwaivers@cms.hhs.gov.

² New York's currently approved waiver created a new coverage program, the EP Expansion, that generally mirrors the state's Basic Health Program (BHP), known as the EP, with expanded eligibility to certain residents with estimated household incomes up to 250% of the FPL. The EP Expansion also includes some individuals with incomes below 250% of FPL who would otherwise be enrolled in Medicaid coverage or in a state-funded health insurance program absent the waiver.

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 'Jeff Wu', with a stylized flourish at the end.

Jeff Wu
Acting Director
Center for Consumer Information and Insurance Oversight (CCIIO)

Cc: Aviva Aron-Dine, Acting Assistant Secretary, Tax Policy, U.S. Department of the Treasury
The Honorable Kathy Hochul, Governor, State of New York
Johanne Morne, Acting Executive Deputy Commissioner, New York State Department of Health
Danielle Holahan, Executive Director, NY State of Health
Sonia Sekhar, Deputy Director, NY State of Health

Enclosure

Specific Requirements for New York's Waiver Amendment Application

The Departments will review New York'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 HHS 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. Given the recency of New York's 1332 waiver application and approval, the amendment application may refer to or include relevant analysis and projections from the initial waiver application. New York'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. A description of the changes to 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. An updated implementation timeline;
 - e. Any activities at the state level that are outside of the waiver, but that impact the baseline; and
 - f. Sufficient supporting documentation.

- (2) An explanation and evidence that the state has conducted the state public notice process 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 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, cost-sharing, 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%, ≥100% to ≤150%, >150% to ≤200%, >200% to ≤250%, >250% to ≤300%, >300% to ≤400%, and greater than 400% of FPL),¹ by PTC eligibility (or EP or EP Expansion eligibility), and by CSR variant;
 - B. Overall average non-group market premium rate (i.e., total individual market premiums divided by total member months of all enrollees);
 - 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;

¹ To the extent different income cuts are more appropriate in the context of a specific waiver, the state may use those income cuts instead.

D. The state's age rating curve (or a statement that the federal default is used);

E. Aggregate non-group market premiums and PTC; and

ii. Documentation of any new or updated assumptions and methodology relative to the State's original waiver application, as applicable, used to develop the projections and growth of health care spending.

(5) An explanation of the expected impact, if any, of the proposed amendment on pass-through funding (e.g., due to enrollment changes associated with any new affordability programs under the waiver), 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.