

Commissioner of Securities and Insurance

Troy Downing
Commissioner



Office of the
Montana State Auditor

December 20, 2023

The Honorable Xavier Becerra
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Submitted via email to 1332-WaiverSupport@cms.hhs.gov

RE: Montana 1332 State Innovation Waiver Extension

Dear Secretaries Becerra and Yellen,

The Montana Commissioner of Securities and Insurance, Office of the Montana State Auditor, hereby gives notice that he intends to seek a 5-year extension of the existing 1332 State Innovation Waiver. This extension will not seek any substantive changes to the existing waiver or Specific Terms and Conditions of the previous waiver term.

We look forward to working with you to complete the waiver extension application process. The agency contact for this application will continue to be Andrew Cziok, CSI Legal Counsel, Acziok@mt.gov, (406) 444-3467.

Thank you for the opportunity to continue to strengthen the individual health insurance market for Montana consumers.

Sincerely,

A handwritten signature in blue ink, appearing to read "Troy Downing".

Troy Downing
Montana State Auditor,
Commissioner of Securities and Insurance

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



January 17, 2024

VIA ELECTRONIC MAIL: troy.downing@mt.gov

Troy Downing
Montana Commissioner of Securities and Insurance
Office of the Montana State Auditor
840 Helena Avenue
Helena, MT 59601

Dear Commissioner Downing:

Thank you for your December 20, 2023, letter of intent (LOI) to apply for an extension of Montana'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 has informed the Departments at least one year prior to the waiver's end date, as required by the specific terms and conditions (STCs) governing Montana's (hereafter referred to as the "state") waiver,¹ of the state's intent to apply for continuation of the waiver. The Departments confirm that the state's anticipated section 1332 waiver application, as described below, may be submitted and will be reviewed as a waiver extension request. The requirements for the state's waiver extension application are enclosed with this letter. If the extension is approved, the Departments may determine the waiver extension will be subject to additional or revised requirements, which will be provided in the extension STCs.

The state's currently approved waiver of the ACA requirement for the single risk pool contained in ACA section 1312(c)(1) allows the state to operate a state-based reinsurance program for the individual health insurance market from January 1, 2020, through December 31, 2024. The state has confirmed that it seeks to waive ACA section 1312(c)(1) for an additional waiver period of five years from January 1, 2025, through December 31, 2029. The state aims to continue implementing the section 1332 waiver to support Montana's continued success in making health insurance more affordable and accessible to Montana residents.

¹ See STC 9. The applicable STCs are available here: <https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/downloads/1332-mt-approval-stcspdf.pdf>

A waiver extension is an extension of the existing waiver terms and does not propose any changes to the existing waiver that are not otherwise allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design. Given that the state has not indicated any intentions to change any features of its waiver plan (except for the extended time period), the state may proceed with submitting an application for a waiver extension. The Departments encourage the state to submit its waiver extension application sufficiently in advance of the requested waiver effective date, ideally no later than the first quarter of 2024.

The enclosed document further outlines the application requirements for the state's waiver extension. Once the Departments receive the state's waiver extension 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 extension without prior written approval by the Departments. This letter does not constitute any pre-determination or intent to approve the state's proposed extension 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 or stateinnovationwaivers@cms.hhs.gov.

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 written in a cursive style with a large, sweeping flourish at the end.

Ellen Montz, Ph.D.
Director, Center for Consumer Information & Insurance Oversight (CCIIO)
Deputy Administrator, Centers for Medicare & Medicaid Services (CMS)

CC: Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
The Honorable Greg Gianforte, Governor, State of Montana
Andrew Cziok, Legal Counsel, Office of the Montana State Auditor

Enclosure

Specific Requirements for Montana's Waiver Extension Application

The Departments will conduct a preliminary review of Montana's (hereafter referred to as the "state") waiver extension application and make a preliminary determination as to whether it is complete within approximately 30 days after it is submitted to stateinnovationwaivers@cms.hhs.gov. If the Departments determine 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. 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. The state's waiver extension application must include the following:

- (1) A detailed description of the extension request, including the desired time period for the extension. The state must confirm there are no changes to the current waiver plan for the new waiver period that are otherwise not allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design;
- (2) Updated economic or actuarial analyses for the extension period, if the state is aware of changes in state law, the state insurance market, or to the waiver program that are allowable under the STCs and impact waiver assumptions and projections, and that the state has not previously shared with the Departments via its reporting requirements;
- (3) Preliminary evaluation data and analysis of observable outcomes from the existing waiver program, which includes quantitative or qualitative information on why the state believes the program did or did not meet the statutory guardrails. For example, the state may provide information comparing the originally projected premium reductions or expected claims reimbursements to the actual values of the outcomes observed;
- (4) 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 extension;
- (5) An explanation and evidence of the process to ensure meaningful public input on the extension request, which must include:
 - 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 to ensure that the public is aware that the state is contemplating a waiver extension request; and
 - c. Publicly posting the waiver extension application on the state's website upon its submission of the waiver extension application to the Departments.

The state does not have to meet all of the public notice requirements specified for new waiver applications in 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312 (e.g., holding two public hearings and providing a 30-day comment period) to fulfill paragraph (5) above. However, the state must ensure and demonstrate there was an opportunity for meaningful public input on the extension request. For

example, the state may choose to hold one public hearing or provide an amended or shorter comment period, or some combination of both. If the state holds one public hearing, it can use its annual public forum for the dual purposes of gathering input on the existing waiver as well as the extension application request.

- (6) The Departments may request additional information and/or analysis in order to evaluate and reach a decision on the requested extension.