

May 3, 2024

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

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

Dear Secretary Becerra and Secretary Yellen,

The State of Maryland, through the Maryland Health Benefit Exchange (MHBE), intends to submit an application for an amendment to its Waiver under Section 1332 of the Patient Protection and Affordable Care Act (“section 1332 waiver”) to the Centers for Medicare and Medicaid Services (CMS) in the Department of Health and Human Services, and the Department of the Treasury (“the Departments”) on July 15, 2024. Through this application, MHBE will seek to waive section 1312(f)(3) of the Affordable Care Act (ACA) to the extent it would otherwise prohibit enrollment of residents in Qualified Health Plans (QHPs or “private plans”) and Qualified Dental Plans through MHBE, thereby allowing all qualified Maryland residents to enroll in private plans on-Exchange, regardless of immigration status. MHBE intends to request to waive section 1312(f)(3) for the period January 1, 2026 through December 31, 2028.

Maryland currently has an approved section 1332 waiver that waives section 1312(c)(1) of the Affordable Care Act (ACA) to facilitate Maryland’s State Reinsurance Program. The original waiver period was five years, beginning January 1, 2019 and ending December 31, 2023. On March 30, 2023, Maryland applied to extend its section 1332 waiver for an additional five-year period, through December 31, 2028. The Departments approved the extension request on June 28, 2023.

During its 2024 Legislative session, the Maryland General Assembly passed the Access to Care Act (SB705/HB728), directing MHBE to apply for a waiver amendment to allow all Maryland residents to enroll in private plans on-Exchange, regardless of immigration status.

An estimated 112,400 Marylanders are uninsured and ineligible for coverage due to immigration status. This comprises about 30% of Maryland’s uninsured population.<sup>1</sup> Currently, individuals

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<sup>1</sup>Source: MHBE analysis of American Community Survey data

ineligible to enroll on-Exchange due to their immigration status are able to purchase full-price health plans off-Exchange. If the waiver amendment is approved, these individuals would be able to enroll in full-price private plans on-Exchange. Although the Access to Care Act does not allocate funds to subsidize the cost of coverage for these individuals, allowing enrollment regardless of immigration status would enable access to many other benefits available through the Exchange, including:

- A simplified shopping experience that allows consumers to compare plans from all individual market insurers in one place. Consumers can easily compare plan costs, check if plans include their providers and prescription drugs, and use tools available to estimate total health care costs in order to help find the right plan tailored to their needs;
- Extensive consumer support through our Call Center, which provides consumer support 6 days a week in more than 200 languages, and in-person assistance through the Navigator Program and authorized brokers;
- The ability for mixed-status families to enroll in the same plan through the Exchange, which would provide continuity of coverage and care coordination, save families money by allowing individuals in the family to share a single plan deductible and out-of-pocket maximum, and reduce the burden of managing multiple plans.

MHBE does not anticipate requesting additional federal pass-through funding as a result of this amendment.

If the waiver amendment is approved, MHBE anticipates the new eligibility rules to be effective by the start of Open Enrollment for Plan Year 2026 coverage (by November 1, 2025). MHBE's desired timeline for the application process is as follows:

- 6/3/2024: The Departments respond to letter of intent.
- 6/10/2024: Application published on MHBE website; 30-day state public comment period; MHBE to hold two public hearings between 6/10/2024 - 7/9/2024.
- 7/9/2024: Public comment period ends.
- 7/15/2024: MHBE submits waiver amendment application to the Departments.
- 8/29/2024: The Departments determine that the application is complete.  
30-day Federal public comment period begins.
- 9/30/2024: 30-day Federal public comment period ends.
- 12/31/2024: The Departments approve the waiver amendment.
- 11/1/2025: Open Enrollment for Plan Year 2026 begins.
- 1/1/2026: Coverage begins for Plan Year 2026; qualified residents eligible to enroll in QHPs on-Exchange, regardless of immigration status.

These dates are subject to change if substantial revisions to the draft application are required in response to the Departments' response to this LOI or in response to public comment. MHBE acknowledges that the Departments may take up to 180 days to approve a waiver amendment

request but is prepared to work closely with the Departments so that the request, if possible, might be reviewed and approved more quickly, ideally by the end of 2024.

Thank you for your consideration. MHBE looks forward to working with the Departments through the waiver amendment process.

Sincerely,



Michele Eberle  
Executive Director

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



June 4, 2024

**VIA ELECTRONIC MAIL:** [michele.eberle@maryland.gov](mailto:michele.eberle@maryland.gov)

Michele Eberle  
Executive Director  
Maryland Health Benefit Exchange  
750 E. Pratt St., 6<sup>th</sup> Floor  
Baltimore, MD 21202

Dear Director Eberle:

Thank you for your May 3, 2024, letter of intent (LOI) to apply for an amendment to Maryland'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 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 the state'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 that the waiver amendment will be subject to additional or revised requirements, which will be provided in the amendment specific terms and conditions (STCs).

The state's currently approved waiver extension 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, 2024, through December 31, 2028. As described in the May 3, 2024, LOI, the state seeks to amend its currently approved section 1332 waiver extension to also waive section 1312(f)(3) of the ACA to the extent it would otherwise prohibit enrollment of residents in Qualified Health Plans and Qualified Dental Plans through the Maryland Health Benefit Exchange (MHBE), thereby allowing all qualified Maryland residents to enroll in such plans on-Exchange, regardless of immigration status, from plan years 2026 through 2028.

A waiver amendment is a change to the existing waiver plan 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 the state will need to waive an additional statutory provision(s) in order to implement its proposed change in eligibility, the Departments have determined that this is a substantive change in program design and is not otherwise allowable under the state's existing STCs. As such, the Departments confirm that the state 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 and, if necessary, will identify the elements that 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 written approval by the Departments. This letter does not constitute any pre-determination or intent to approve the state's proposed amendment application.

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](mailto: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,



Jeff Wu  
Acting Director, Center for Consumer Information & Insurance Oversight (CCIIO)  
Centers for Medicare & Medicaid Services (CMS)

CC: Aviva Aron-Dine, Acting Assistant Secretary, Tax Policy, U.S. Department of the Treasury  
The Honorable Wes Moore, Governor, State of Maryland  
Kathleen A. Birrane, Commissioner, Maryland Insurance Administration  
Johanna Fabian-Marks, Director, Policy and Plan Management, MHBE  
Tony Armiger, Chief Financial Officer, MHBE

Enclosure

## Specific Requirements for Maryland's Waiver Amendment Application

The Departments will review Maryland'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](mailto: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. The state'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, 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:<sup>1</sup>
      - 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),<sup>2</sup> by PTC-eligibility, and by metal level. For those projected to newly enroll in Exchange coverage under the waiver, please also provide the number of enrollees by without-waiver coverage type (uninsured, employer-sponsored, other non-group, etc.);

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<sup>1</sup> Specifically, the without-waiver scenario refers to the baseline, the currently approved with-waiver scenario refers to the reinsurance-only scenario, and the amended with-waiver scenario refers to a combined reinsurance and amendment scenario.

<sup>2</sup> To the extent different income cuts are more appropriate in the context of a specific waiver, the state may use those income cuts instead.

B. Overall average non-group market premium rate (i.e., total individual market premiums divided by total member months of all enrollees);

C. SLCS 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); and

E. Aggregate non-group market premiums and PTC.

ii. Documentation of all assumptions and methodology 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, 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.