



January 15, 2025

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

Dear Commissioner McDonald:

Thank you for your submissions<sup>1</sup> regarding New York's application to extend its State Innovation Waiver (also referred to as a "section 1332 waiver") under section 1332 of the Patient Protection and Affordable Care Act (ACA).<sup>2</sup> New York (also referred to as "the State") has requested an extension of its waiver in order to extend implementation of its waiver plan for an additional year through plan year 2029.<sup>3</sup> I am pleased to send this letter from the Department of Health and Human Services (HHS), as well as on behalf of the Department of the Treasury (collectively, "the Departments").

This letter is to inform you that the Departments, having completed their review of the waiver extension application, approve New York's extension application for its section 1332 waiver. The State's final approved waiver extension application comprises the initial December 9, 2024, as well as the updated December 11, 2024, submissions. Described below are the specific terms and conditions (STCs) of this extended section 1332 waiver. The Departments' approval of the waiver extension is conditioned upon the State's acceptance of these STCs within 30 calendar days of this letter, or by February 14, 2025. This approval is effective for a waiver period beginning on the date of the State's acceptance of these STCs through December 31, 2029.<sup>4</sup>

The Departments are granting New York's waiver extension application to continue to waive section 36B of the Internal Revenue Code (IRC) to the extent it would otherwise provide that a "month" is a "coverage month" (and therefore a premium tax credit (PTC) may be allowed for that month) if an individual residing in New York is under age 65 and has in effect a determination by New York State of Health, New York's State-based Exchange ("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

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<sup>1</sup> These submissions include the initial December 9, 2024, waiver extension application as well as the December 11, 2024, updated waiver extension application.

<sup>2</sup> References to New York's approved section 1332 waiver encompass both the original section 1332 waiver approved on March 1, 2024, and the waiver amendment approved on September 25, 2024.

<sup>3</sup> New York's currently approved waiver of section 36B of the Internal Revenue Code (IRC) and sections 1402 and 1312(c)(1) of the ACA allows the State to operate a new coverage program, the EP Expansion, and its currently approved waiver amendment includes state cost-sharing subsidies for certain enrollees in the Exchange from January 1, 2025, through December 31, 2028.

<sup>4</sup> Upon the State's acceptance of the STCs, the enclosed STCs will supersede and replace the September 25, 2024, STCs governing New York's amended section 1332 waiver.

and with estimated household income at or below 250% of FPL eligible for cost-sharing reductions for the purposes of enrolling these individuals in the State's coverage program, the Essential Plan (EP) Expansion, as described in the State's waiver application. The approved extension will also allow New York to continue to waive 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 income of 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 waiver application.

The Departments remain committed to working with state partners to advance health care coverage policies. Through section 1332 waivers, the Departments aim to assist states with developing health insurance markets that expand coverage, lower costs, and ensure that affordable health coverage is available for their residents. The Departments have determined that the proposed extension of the waiver plan satisfies the statutory guardrails (as set forth in sections 1332(b)(1)(A)-(D) of the ACA), and that implementation of this waiver plan extension is projected to continue to increase total enrollment and affordability for lower-income individuals who are eligible for the EP Expansion due to the waiver and for enrollees in New York's Exchange when compared to the without-waiver baseline. New York's approved waiver is projected to result in net federal PTC savings. The net PTC savings attributable to the waiver will be passed through to the State to be used solely for implementation of the waiver plan. The Departments have considered public comments in making these determinations.<sup>5</sup> The Departments shared the comment received during the federal comment period with the State for its review and consideration. The comment received and the Departments' response are available on the CMS section 1332 waiver website.<sup>6</sup>

The enclosed STCs further define the State's responsibilities with respect to implementation of the waiver and use of pass-through funding during the waiver period and the nature, character, and extent of anticipated federal oversight of the waiver. The State is encouraged to engage with the Departments early in the process if it is interested in amending or further extending its waiver plan. The required information and process may vary based on the complexity of the proposed change or additional extension. A breach of any of the STCs may lead to termination of New York's section 1332 waiver.

Please send your written acceptance and any communications and questions regarding program matters or official correspondence concerning the waiver to [lin.rashid@cms.hhs.gov](mailto:lin.rashid@cms.hhs.gov) or [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

Congratulations. We look forward to working with you and your staff. Please do not hesitate to contact us if you have any questions.

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<sup>5</sup> The State received a total of 10 written comments during the state public comment period and two oral comments at public hearings. All comments received by the State were in support of the waiver extension. The Departments received one public comment in support of the waiver during the federal public comment period, which was open from December 11, 2024, through January 10, 2025.

<sup>6</sup> <https://www.cms.gov/marketplace/states/section-1332-state-innovation-waivers>

Sincerely,



Chiquita Brooks-LaSure

Enclosure

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

DEPARTMENT OF HEALTH AND 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: New York State Department of Health —Patient Protection and Affordable Care Act  
Section 1332 Waiver Approval  
AWARDEE: New York State Department of Health

I. PREFACE

The following are the specific terms and conditions (STCs) for the New York State Department of Health’s (hereafter referred to as the “State”) Patient Protection and Affordable Care Act (ACA)<sup>1</sup> section 1332 State Innovation Waiver to create a new coverage program and to expand eligibility for the State’s new coverage program (hereafter referred to as the “Essential Plan (EP) Expansion”) to certain New York residents with estimated household income up to 250% of the Federal Poverty Level (FPL) (hereafter referred to as “waiver” or “waiver plan”), which has been approved by the U.S. Department of Health and 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 related to the waiver. These STCs are effective beginning on the date of the State’s acceptance of these STCs through December 31, 2029, unless the waiver is extended, otherwise amended, suspended, or terminated by the parties in accordance with the applicable processes set forth in and provided by these STCs; however, the Departments reserve the right to amend these STCs when the Departments make the annual determinations of the pass-through amounts for April 2025 through December 2029. The State’s final waiver plan application<sup>2</sup> to waive certain provisions of the ACA is specifically incorporated by reference into these STCs, except with regard to any proposal or text in the waiver plan that is inconsistent with the Departments’ approval of the waiver or these STCs. Upon the State’s acceptance of these STCs, they will supersede and replace the September 25, 2024, STCs governing New York’s currently approved amended waiver.

**1. ACA Provisions Waived under Section 1332 State Innovation Waiver (Section 1332 waiver).** Section 36B of the Internal Revenue Code is waived to the extent it would otherwise provide that a month is a “coverage month” (and therefore a premium tax credit (PTC) 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 FPL, as well as section 1402 of the ACA to the extent it would otherwise require New York residents under age 65 and with estimated household income at or below 250% of FPL to be eligible for cost-sharing reductions for the purposes of enrolling these individuals in the EP Expansion, as

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<sup>1</sup> The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In these STCs, the two statutes are referred to collectively as the “Patient Protection and Affordable Care Act” or “ACA.”

<sup>2</sup> The State’s final waiver plan application refers to the May 12, 2023, application, the December 18, 2023, addendum (which also encompasses the August 23, 2023, and November 14, 2023, addenda), the June 28, 2024, amendment application, the December 9, 2024, waiver extension application, and the December 11, 2024, updated waiver extension application.

described in the State's waiver application. Additionally, section 1312(c)(1) of the ACA is waived to the extent it would otherwise prohibit including individuals with estimated household income of 200 to 250% of FPL in the single risk pool when establishing the market-wide index rate for the purposes described in the State's waiver application.

**2. Changes in State Law and Technical Changes to the Waiver.** The State must inform the Departments of any change in state law or regulations that could impact the waiver, including any changes to the requirements of the State's waiver plan, or any proposed technical changes to the waiver occurring after the date of this approval letter, at least thirty (30) calendar days prior to the intended implementation date of the change. Changes might be considered technical changes if they are routine changes of an operational nature that do not impact whether the statutory guardrails (as set forth in sections 1332(b)(1)(A)-(D) of the ACA) are met, and which do not materially impact, such as by establishing or eliminating, any obligations of the State or the Departments with respect to the waiver.<sup>3</sup> The State must consult with the Departments well in advance of implementing any change and must receive confirmation from the Departments that the change is a technical change prior to implementation of the change. The Departments will consider the facts and circumstances of each proposed change and reserve discretion to request additional information from a state when determining whether a proposed change is a technical change or requires submission of a waiver amendment request.<sup>4</sup> If the Departments determine that the change to the State's waiver plan is not a technical change but instead would be an amendment, the State must submit a waiver amendment request as set forth in STC 9 and receive approval from the Departments prior to implementing the change described in the waiver amendment request.

**3. Funds to Operate the Waiver.** The State's waiver plan will be funded through a combination of federal pass-through funding and state funding from state appropriations. The State must ensure sufficient funds are available on an annual basis for the waiver to operate as described in the State's waiver plan.<sup>5</sup>

**4. Compliance with Federal Non-Discrimination Statutes.** The State must comply with all applicable federal statutes relating to non-discrimination. These include, but are not limited to, 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 ACA.

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<sup>3</sup> Generally, changes that are operational in nature that comply with standard requirements in statute and regulations established for minimum essential coverage, the operation of state-based exchanges, or Basic Health Programs might be considered technical changes unless the change could impact whether the waiver can continue to meet the statutory guardrails or could materially impact, such as by establishing or eliminating, the obligations of the State or the Departments with respect to the waiver. While the Departments ultimately determine if a change is considered a technical change, some examples of routine changes of an operational nature that, implemented alone or in combination, may constitute technical changes are: changes to EP Expansion copay levels that do not impact the actuarial value of the plan, certain changes in state subsidies for certain Exchange enrollees, certain changes in the EP Expansion capitation rates, certain changes in EP Expansion enrollment processing and verification processing, or certain changes to the parameters of the quality incentive pool or social determinants of health (SDOH) and behavioral health grants.

<sup>4</sup> Failure to provide requested information in a timely manner may result in delays in the Departments' determination as to whether the change is a technical change or requires submission of a waiver amendment request.

<sup>5</sup> The Departments emphasize that the State must ensure sufficient funding for the components of the waiver that have a direct impact on the statutory guardrails. These components include supporting coverage and affordability for enrollees in the EP Expansion (e.g., cost-sharing and premiums) in the manner described in the State's waiver plan, the Insurer Reimbursement Implementation Plan (IRIP), and any associated administrative costs. To the extent funds are available, as described in the State's waiver plan, the State's waiver will also include state subsidies for certain Exchange enrollees, the quality incentive pool, and providing incentives for health plans to offer benefits in the areas of SDOH and behavioral health.

**5. Compliance with Applicable Federal Laws.** Per 31 C.F.R. § 33.120(a) and 45 C.F.R. § 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 ACA. Further, section 1332(c) of the ACA states that while the Secretaries of the Departments 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 Fed. Reg. 11700, 11711 (February 27, 2012). Therefore, for example, section 1332 of the ACA does not grant the Departments authority to waive any provision of the Employee Retirement Income Security Act of 1974. The State must also 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, these STCs, or the 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. In the event that any aspect, term, or provision of this waiver or these STCs is held invalid, illegal, or unenforceable by a court in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other aspect, term, or provision of this waiver or these STCs provided that the remaining aspects, terms, and provisions of the waiver continue to comply with the statutory guardrails. The Departments will notify the State at least thirty (30) calendar days in advance of the expected implementation date of the amended STCs, if applicable, to allow the State to discuss the changes necessary to ensure compliance with law, regulation, and policy, to allow the State adequate time to come into compliance with state and federal requirements (including rate review and consumer noticing requirements), and to provide comment, if applicable. Changes will be considered in force upon the Departments' issuance of amended STCs. The State must accept the changes in writing within thirty (30) calendar days of the Departments' notification for the waiver to continue to be in effect. The State must, within the applicable timeframes, come into compliance with any changes in federal law or regulations affecting section 1332 waivers, unless the provision being changed has been expressly waived for the waiver period. If any of the waived provision(s) identified in STC 1 are eliminated under federal law, the Departments would re-evaluate the waiver to see if it still meets all of the section 1332 waiver requirements. If the Departments determine that the waiver needs to be suspended or terminated as a result of a change to federal law, the Departments will provide further guidance to the State as to that process.

**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 State's waiver and these STCs. In addition, the Departments will promptly share with the State any complaint that they may receive and will 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 request to suspend, withdraw, or terminate all or portions of its waiver plan consistent with the following requirements:

- (a) Request for suspension, withdrawal, or termination: If the State wishes to suspend, withdraw, or terminate all or any portion(s) 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 summary of comments received, as described below). The State must submit its request and draft phase-out plan to the Departments no less than nine (9) months<sup>6</sup> 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 thirty (30) calendar day public comment period and conduct Federal tribal consultation as applicable. 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) Departments' approval: 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 begin no sooner than fourteen (14) calendar days after the Departments' approval of the phase-out plan, unless otherwise directed by the Departments.
- (c) Recovery of unused funding: Any unused pass-through funding will be recovered. The State will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

## **9. State Request for Amendment.**

- (a) Definition: For purposes of these STCs and per 31 C.F.R. § 33.130(a) and 45 C.F.R. § 155.1330(a), an amendment is a change to a waiver plan that is not otherwise allowable under these STCs, a change that could impact any of the statutory guardrails, or a change to the program design for an approved waiver.<sup>7</sup> Such potential changes could include, but are not limited to, changes to eligibility, coverage, benefits, premiums, out-of-pocket spending, and cost-sharing. See STC 2 for information on changes that could be considered technical changes instead of a change that would require a waiver amendment.
- (b) Amendment Request Submission Process: Consistent with 31 C.F.R. § 33.130 and 45 C.F.R. § 155.1330, to amend a waiver the State must comply with the following requirements:
  - (1) The State must submit a letter to the Departments notifying them in writing of its intent to request an amendment to its waiver plan(s). The State must include a detailed description of all of the intended change(s), including the proposed implementation date(s), in its letter of intent. The Departments encourage the State to submit its letter of intent at least fifteen (15) months prior to the waiver amendment's proposed implementation date and to engage with the Departments early in its development of a potential waiver amendment. The State may wish to submit this letter of intent more than fifteen (15) months prior to the waiver amendment's proposed implementation date, depending on the complexity of the amendment request and the timeline for implementation, among other factors.

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<sup>6</sup> This timeframe reflects the complexity and novel nature of New York's section 1332 waiver and the need for additional time for coordination and review of any waiver suspension, withdrawal, or termination requests submitted by the State.

<sup>7</sup> Modifications to waivers that are determined by the Departments to be technical changes are not considered waiver amendments and are not subject to the requirements outlined in STC 9 or 31 C.F.R. § 33.130 and 45 C.F.R. § 155.1330.

- (2) The Departments will review the State's letter of intent requesting changes to its waiver plan. Within approximately thirty (30) calendar days of the Departments' receipt of the State's letter of intent, the Departments will respond to the State and confirm whether the change requested is a waiver amendment, as well as identify the information the State needs to submit in its waiver amendment request. This written response will also include whether the proposed waiver amendment(s) would be subject to any additional or different requirements consistent with STC 9(c)(7).
  - (3) For example, depending on the complexity of the amendment request, scope of changes from the waiver plan, operational/technical changes, or implementation considerations, the Departments may impose requirements similar to those specified in 31 C.F.R. § 33.108(f) and 45 C.F.R. § 155.1308(f) for new section 1332 waiver applications. The State should submit its waiver amendment request in writing in electronic format, as outlined in STC 9(c), no later than nine (9) months prior to the waiver amendment's proposed implementation date in order to allow for sufficient time for review of the waiver amendment request. Similar to the regulations at 31 C.F.R. § 33.108(b) and 45 C.F.R. § 155.1308(b) for new waiver applications, the State must submit the waiver amendment request sufficiently in advance of the requested waiver amendment implementation date, particularly when the waiver plan or requested amendment could impact premium rates, to allow for an appropriate review and implementation timeframe. Depending on the complexity of the amendment request, the State may want to submit the amendment request earlier than nine (9) months prior to implementation. In developing the implementation timeframe for its waiver amendment request, the State must maintain uninterrupted operations of the Exchange in the State and provide adequate notice to affected stakeholders and issuers of health insurance plans that would be (or may be) affected by the amendment to take necessary action based on approval of the waiver amendment request.
  - (4) The Departments reserve the right to deny or withhold approval of a state waiver amendment request based on non-compliance with these STCs or any additional direction and information requests from the Departments, including a failure by the State to submit required reports and other deliverables in a timely fashion.
  - (5) The State is not authorized to implement any aspect of the proposed amendment without prior approval from the Secretaries.
- (c) Content of Amendment Application: All amendment applications are subject to approval at the discretion of the Secretaries in accordance with section 1332 of the ACA. The State must furnish such information and analysis regarding the proposed waiver amendment that is necessary to permit the Departments to evaluate the request. A waiver amendment request must include the following:
- (1) A detailed description of the requested amendment, including the time period for the proposed amended waiver, impact on the statutory guardrails, the scope of the proposed amendment to the waiver plan—including whether the State seeks to waive any new provisions and the rationale for the waiver—and related changes to the waiver plan elements as applicable, including sufficient supporting documentation;



- (2) An explanation and evidence of the process used by the State to ensure meaningful public input on the proposed waiver amendment request. The State must conduct the State public notice process that is specified for new applications at 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312. It may be permissible for a state to use its annual public forum required under 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c) for the dual purpose of soliciting public input on a proposed waiver amendment request and on the progress of its waiver plan;
- (3) Evidence of sufficient authority under state law(s) in order to meet the requirement in section 1332(b)(2)(A) of the ACA for purposes of pursuing the waiver amendment request;
- (4) An implementation plan with operational details (if appropriate) to demonstrate that the waiver would maintain uninterrupted operations of the Exchange in the State, and provision of adequate notice for stakeholders and issuers of health insurance plans that would be (or may be) affected by the proposed amendment to take necessary action based on approval of the waiver amendment request;
- (5) An updated actuarial and/or economic analysis demonstrating how the waiver, as amended, will meet the statutory guardrails. Such analysis must identify the “with waiver” 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 current approval period using data from recent experience, as well as a summary of and detailed projections of the change in the “with waiver” scenario;
- (6) An explanation of the estimated impact, if any, of the waiver amendment on pass-through funding, as well as any new proposed uses for pass-through funding if applicable; and
- (7) Any further requested information and/or analysis that is determined necessary by the Departments to evaluate the waiver amendment request.

#### **10. State Request for Waiver Extension.**

- (a) Definition: For purposes of these STCs and per 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, a waiver extension is an extension of an approved waiver under the existing waiver terms.

The waiver extension request and approval process is separate from the waiver amendment request and approval process described in STC 9, with separate timelines and requirements. An extension request can only include an extension of the existing waiver terms, not other changes to the existing waiver plan. If a state also seeks to make substantive changes to its waiver plan along with seeking an extension, the Departments will treat those changes as amendments and the requirements of STC 9 will also apply.

- (b) Extension Request Submission Process: Consistent with 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, to extend the waiver the State must comply with the following requirements:
  - (1) The State must inform the Departments if the State will apply for an extension of its

waiver at least one (1) year prior to the waiver's end date. The State must submit a letter of intent in electronic format to the Departments to notify them in writing of its intent to request an extension of its waiver plan. The State must include a detailed description of the requested extension period in the letter of intent. The Departments will then review the State's letter of intent request. Within approximately thirty (30) calendar days of the Departments' receipt of the letter of intent, the Departments will respond to the State and confirm whether the extension request will be considered an extension request and, if applicable, whether the request includes changes that would be considered an amendment request subject to the separate process and requirements set forth in STC 9. The Departments' response will also identify the information the State needs to submit in its waiver extension request.

- (2) The State must submit its waiver extension request in writing in electronic format, consistent with the format and manner requirements applicable to initial waiver applications under 31 C.F.R. § 33.108(a) and 45 C.F.R. § 155.1308(a).
  - (3) An extension request shall be deemed granted unless the Secretaries, within ninety (90) calendar days after the date of the State's submission of a complete waiver extension request, either deny such request in writing or inform the State in writing with respect to any additional information needed to make a final determination with respect to the request.
  - (4) The Departments reserve the right to deny a state's waiver extension request based on non-compliance with these STCs or any additional direction and information requests from the Departments, including a failure by the State to submit required reports and other deliverables in a timely fashion.
- (c) Content of Extension Application: All extension applications are subject to approval at the discretion of the Secretaries in accordance with section 1332 of the ACA. The State must furnish information and analysis regarding the proposed waiver extension that is necessary to permit the Departments to evaluate the request. In addition to the periodic reports required by 31 C.F.R. § 33.124 and 45 C.F.R. § 155.1324, the Departments may require additional data and information to be submitted to review the extension request in accordance with 31 C.F.R. § 33.120(f)(2) and 45 C.F.R. § 155.1320(f)(2). A waiver extension request may be required to include the following information:
- (1) Updated economic or actuarial analyses for the requested extension period in a format and manner specified by the Departments;
  - (2) Preliminary evaluation data and analysis from the existing waiver;
  - (3) Evidence of sufficient authority under state law(s) to meet the requirement in section 1332(b)(2)(A) of the ACA for purposes of pursuing the waiver extension request;
  - (4) An explanation of the process followed by the State to ensure meaningful public input on the proposed waiver extension request at the state level. It may be permissible for the State to use its annual public forum under 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c) for the dual purpose of soliciting public input on a proposed waiver

extension request and on the progress of its waiver plan; and

- (5) Other information as requested by the Departments that is necessary to reach a decision on the waiver extension request.

The Departments will identify the information the State needs to submit as part of its waiver extension request in its response to the State's letter of intent.

- (d) Temporary Extension of Waivers: The Departments may extend an existing waiver program on a temporary basis for an additional year while a waiver extension request is under review, without regard to the date when the extension application was submitted.
- (e) End of Waiver Period: If the State does not submit an extension request before the end of the waiver period consistent with STC 10(b)(1) and (2), the Departments will provide guidance on wind-down of the State's waiver.

**11. Reporting.** The State must submit quarterly and annual reports as specified in 31 C.F.R. § 33.124 and 45 C.F.R. § 155.1324.

*Annual Reports:* The State must submit a draft annual report to the Departments within ninety (90) calendar 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 thirty (30) calendar days of submission to the Departments. Within sixty (60) calendar 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 public comments received as part of the post-award forum process. The State must publish the final annual report on the State's public website within thirty (30) calendar days of approval by the Departments.

*Report Contents:* Each such annual report must include:

- (a) The progress of the waiver;
- (b) Data and metrics sufficient to show compliance and assist evaluation of the waiver's compliance with sections 1332(b)(1)(A) through (D) of the ACA:
  - (1) Projected and actual individual market enrollment in the State, both on-Exchange (separately for enrollees with advance payments of the premium tax credit (APTC) and without APTC) and off-Exchange. For data on enrollees with APTC, provide enrollment by age (under 18 years, 18 through 34 years, 35 through 44 years, 45 through 54 years, 55 through 64 years, and 65 years and over), and, to the extent possible, by race, ethnicity, language preference, and disability status, separately for those with estimated household income up to 200% of FPL, those with estimated household income over 200% of FPL and up to 250% of FPL, and those with estimated household income over 250% of FPL.
  - (2) Projected and actual EP Expansion enrollment in the State by age (under 18 years, 18 through 34 years, 35 through 44 years, 45 through 54 years, 55 through 64 years, and

65 years and over); by Pregnancy Choice status;<sup>85</sup> by DACA receipt; and, to the extent possible, by race, ethnicity, language preference, and disability status, separately for those with estimated household income up to 200% of FPL and those with estimated household income over 200% of FPL.

- (3) Projected and actual average individual market premium rate (i.e., total individual market premiums divided by total member months of all enrollees).
  - (4) Projected and 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.
  - (5) Plan parameters (including enrollee premium contributions, out-of-pocket maximums, deductibles, and other cost-sharing parameters) for the EP Expansion offered to each enrollment cohort. The amount of interest generated by the State's BHP Trust Fund and remitted to CMS.
  - (6) The percentage overlap between the EP Expansion and qualified health plan (QHP) provider networks.
  - (7) Any available data on the experience of EP Expansion enrollees including survey data describing barriers to enrollment or accessing services and data related to transitions between Medicaid, the EP Expansion, and QHPs offered through the Exchange, including data for individuals whose current coverage type is unknown.
- (c) A summary of the annual post-award public forum, held in accordance with 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), including all public comments received at such forum regarding the progress of the waiver and action taken in response to such concerns or comments;
- (d) Technical changes to the State's waiver plan, including the funding level the program will be operating at for the next plan year, or other waiver plan changes as specified in STC 2;
- (e) Notification of changes to state law or regulations (e.g., including but not limited to changes relating to network adequacy requirements) that may impact the waiver as specified in STC 2;
- (f) Reporting of:
- (1) Federal pass-through funding spent, in aggregate and by spending category, on all expenditures, including supporting affordability for enrollees in the EP Expansion (e.g., cost-sharing and premiums), the capitation payment (which will encompass enhancing benefits for enrollees, community-based long-term services and supports, and provider reimbursements), coverage for pregnant individuals who remain

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<sup>8</sup> Individuals enrolled via Pregnancy Choice should include both pregnant enrollees and postpartum enrollees who would otherwise be eligible for Medicaid due to their pregnancy or postpartum status.

enrolled in the EP Expansion, coverage for DACA recipients enrolled in the EP expansion, supporting the Quality Incentive Pool for issuers, incentives for health plans to offer benefits in the areas of SDOH and behavioral health, administrative costs, IRIP reimbursements, and state subsidies for certain Exchange enrollees.

- (2) The unspent balance of federal pass-through funding for the reporting year, if applicable.
- (g) The amount of state funding from state appropriations, or other funding to support the waiver for the reporting year;
- (h) Any evidence of fraud, waste, or abuse on the part of participating providers, plans, or the State EP Expansion Agency known to the State;
- (i) Other information the Departments determine is necessary to calculate pass-through amounts or to evaluate the waiver.

*Payment Schedule:* If appropriate, the State will inform the Departments of any updates to the State's waiver program payment schedule by April 1, 2025.

*Quarterly and Other Reports:* Under 31 C.F.R. § 33.120(b), 31 C.F.R. § 33.124(a), 45 C.F.R. § 155.1320(b), and 45 C.F.R. § 155.1324(a), the State must conduct periodic reviews related to the implementation of the waiver. 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 sixty (60) calendar days following the end of each calendar quarter. The State can submit its annual report in lieu of the fourth quarter report.

**12. Post Award Forum.** Per 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), within six (6) 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 thirty (30) calendar days prior to the date of the planned public forum. Per 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), 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 C.F.R. § 33.124 and 45 C.F.R. § 155.1324 and as specified in STC 11.

**13. Monitoring Calls.** The State must participate in monitoring calls with the Departments that are deemed necessary by the Departments. The purpose of these monitoring calls is to discuss any significant actual or anticipated developments affecting the waiver. Areas to be addressed include the impact on the statutory guardrails set forth in sections 1332(b)(1)(A) – (D) of the ACA 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.

**14. Federal Evaluation.** The Departments will evaluate the waiver using federal data, state reporting, and the application itself to ensure that the Secretaries can exercise appropriate oversight of the approved waiver. Per 31 C.F.R. § 33.120(f) and 45 C.F.R. § 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 may charge the State for evaluation costs to the federal government.

**15. Pass-through Funding.** Under section 1332(a)(3) of the ACA, pass-through funding is based on the amount of PTC that would have been provided to individuals under section 36B of the Internal Revenue Code in the State absent the waiver, but that will not be provided under the State's waiver, reduced, if necessary, to ensure deficit neutrality as required by section 1332(b)(1)(D) of the ACA. In addition, the waiver of PTC for individuals with estimated household income up to 250% of FPL (and thereby also for individuals with estimated household income up to 200% of FPL) will eliminate the federal BHP payment to the State, and the Departments will pass through these BHP savings to the extent they correspond to PTC that the Departments project would otherwise have been paid on behalf of individuals enrolled in QHPs, not to exceed the full amount of annual BHP savings. The State will receive pass-through funding for the purpose of implementing the waiver, including administration of the waiver, when the requirements described below are met.

For the 2026 plan year and each plan year thereafter, by September 15 of the preceding year or once the State has finalized rates for the applicable plan year, whichever is later, the State will provide the following information to the Departments:

- (a) The final SLCSP rates for individual health insurance coverage for a representative individual (e.g., a 21-year-old non-smoker) in each rating area or service area (if premiums vary by geographies smaller than rating areas) for the applicable plan year;
- (b) The estimate of what the final SLCSP rates for individual health insurance coverage for a representative individual in each rating area or service area (if premiums vary by geographies smaller than rating areas) would have been absent approval of this waiver for the applicable plan year. The State must include with this information the methods and assumptions the State used to estimate the final SLCSP rates and the State's estimate of what the final SLCSP rates would have been absent approval of the waiver for each rating area or service area absent approval of this waiver; the State's methods and assumptions should specify, in particular, any assumptions relating to issuer participation or plan offerings absent the waiver;
- (c) To facilitate monitoring and evaluation of the waiver's impact on premiums, including the impact of rating policies associated with IRIP, the actuarial attestation—regarding issuers' development of the rates provided in (a) and (b)—specified by the Departments and that has been signed by an actuary who is qualified to do so and is a member of the American Academy of Actuaries;
- (d) Data and relevant information on issuers' assumptions with respect to any expected impacts of state cost-sharing subsidies under the waiver on eligible Exchange enrollees' health care utilization (if not already in other STC 15 reporting);
- (e) Separately for enrollees with estimated household income of 200 to 250% of FPL and for

enrollees with estimated household income above 250% of FPL, the total amount of all premiums expected to be paid for individual health insurance coverage and, separately, for the EP Expansion for the applicable plan year;

- (f) Separately for enrollees with estimated household income of 200 to 250% of FPL and for enrollees with estimated household income above 250% of FPL, what total premiums for individual health insurance coverage and, separately, for the EP would have been for the applicable plan year without the waiver;
- (g) Separately for enrollees with estimated household income up to 200% of FPL, for enrollees with estimated household income of 200 to 250% of FPL, and for enrollees with estimated household income above 250% of FPL, the total number of member months expected in individual health insurance coverage and, separately, in the EP Expansion for the applicable plan year. To facilitate monitoring and evaluation of the impact of rating policies associated with the IRIP, please provide these data broken out by enrollee age (under 18 years, 18 through 34 years, 35 through 44 years, 45 through 54 years, 55 through 64 years, and 65 years and over). For EP Expansion enrollment, these data should also be reported separately by Pregnancy Choice status and DACA receipt;
- (h) Separately for enrollees with estimated household income up to 200% of FPL, for enrollees with estimated household income of 200 to 250% of FPL and for enrollees with estimated household income above 250% of FPL, what the total number of member months in individual health insurance coverage and, separately, in the EP would have been for the applicable plan year absent the waiver. To facilitate monitoring and evaluation of the impact of rating policies associated with the IRIP, please provide these data broken out by enrollee age (under 18 years, 18 through 34 years, 35 through 44 years, 45 through 54 years, 55 through 64 years, and 65 years and over);
- (i) The amount of APTC paid by month and rating area for the current plan year to date. These data should be reported separately, by enrollee age group (aged  $\leq 64$  and aged  $> 64$ ), for enrollees with estimated household income at or below 250% of FPL and for enrollees with estimated household income above 250% of FPL;
- (j) The number of APTC recipients by month and rating area for the current plan year to date. These data should be reported separately, by enrollee age group (aged  $\leq 64$  and aged  $> 64$ ), for enrollees with estimated household income at or below 250% of FPL and for enrollees with estimated household income above 250% of FPL;
- (k) The state-specific age curve premium variation for the current and upcoming plan year;
- (l) The state-specific uniform family tiers for the current and upcoming plan year;
- (m) Reports of the estimated total EP Expansion reimbursements (state premium subsidies and, if applicable, cost-sharing), state subsidies for Exchange enrollees, and IRIP reimbursements for the upcoming plan year. For the estimated IRIP reimbursements, provide the assumptions used by the State to develop the estimate;

- (n) Reports of the total enrollment estimates for individual health insurance coverage, both with and without the waiver for the upcoming plan year;
- (o) An explanation of why the experience for the upcoming plan year may vary from previous estimates and how assumptions used to estimate the impact have changed. This includes an explanation of changes in the estimated impact of the waiver on aggregate premiums, the estimated impact to the SLCSP rates, and the estimated impact on enrollment. The State should also explain changes to the estimated state subsidy and, if applicable, cost-sharing program estimates relative to prior estimates;
- (p) For the calculation of pass-through associated with enrollees with estimated household income up to 200% of FPL:
  - i. Consistent with (b) above, the estimate of what the final SLCSP rates for individual health insurance coverage for a representative individual in each county would have been absent approval of this waiver for the applicable plan year;
  - ii. The estimate of what the annual EP member months in each county for each of the following estimated household income brackets would have been absent approval of this waiver for the applicable plan year:  $\leq 100\%$  of FPL,  $> 100$  to  $138\%$  of FPL,  $> 138$  to  $150\%$  of FPL,  $> 150$  to  $200\%$  of FPL;
  - iii. Through December two years prior to the applicable pass-through year (i.e., through December 2024 for the 2026 pass-through reporting submission), the actual EP or EP Expansion member months in each county by estimated household income (according to the income brackets in (o)(ii) above); coverage family size (i.e., one adult, two adults, one adult plus child(ren), and two adults plus child(ren)); and tax household size;
- (q) The eligibility criteria and subsidy schedules for state subsidies for certain enrollees in the Exchange; and
- (r) Any other information or data requested by the Departments.

The Departments may also request information or data to be submitted earlier than September 15 of the preceding year, as needed to facilitate the timely calculation of pass-through funding.

The estimated amount of pass-through funding for calendar years 2025 through 2029 will be communicated to the State, conditional on receipt of items (a) through (r) in the paragraph above by the date specified above, on the earliest date practicable. Pass-through amounts are subject to a final administrative determination by the Department of the Treasury prior to payment and will be made available no later than April of the applicable calendar year. Due to the nature, structure, and financing of the waiver, an interim determination with respect to a portion of the pass-through amount will be made, and the associated funding will be made available, in January of the applicable calendar year for calendar years 2025 through 2029. The pass-through amount for calendar years 2025 through 2029 will be calculated by the Departments annually (per section 1332(a)(3) of the ACA) and reported to the State on the earliest date practicable, conditional on receipt of information identified in items (a) through (r) in the paragraph above by the applicable deadline.



The pass-through funds cannot be obligated prior to the effective date for the waiver. The State agrees to use the full amount of pass-through funding for purposes of implementing the State's waiver. This includes administration and implementation of the EP Expansion and affordability programs under the waiver, such as the state subsidies for EP Expansion enrollees and, if applicable, state subsidies for certain Exchange enrollees. In addition to the EP Expansion program under the waiver, New York can also use pass-through funding to support a quality incentive pool for EP Expansion issuers, community-based long-term services and supports, incentives for health plans to offer benefits in the areas of SDOH and behavioral health, provider reimbursements, and the IRIP. Moreover, to the extent pass-through funding exceeds the amount necessary for the State to implement the waiver in a given plan year, the remaining funds must be carried forward and used for purposes of implementing the State's waiver in a subsequent year.

If the waiver is not extended, the Departments will promptly recover unused pass-through funds following the end of the waiver period, December 31, 2029. The State must comply with all necessary steps to facilitate the recovery of such amounts by the Departments within a prompt timeframe.

**16. The Departments' Right to Amend, Suspend, or Terminate.** Consistent with 31 C.F.R. § 33.120(d) and 45 C.F.R. § 155.1320(d), the Departments reserve the right to amend, suspend, or terminate 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 statutory guardrails.

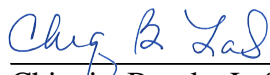
- (a) The Departments will promptly notify the State in writing of the determination and the reasons for the amendment, suspension, or termination, together with the effective date.
- (b) In the event that all of or a portion of the waiver is suspended or terminated by the Departments, federal funding available after the effective date of the suspension, or termination will be limited to normal closeout costs associated with an orderly suspension or termination including service costs during any approved transition period and administrative costs of transitioning participants, as described in 31 C.F.R. § 33.120(e) and 45 C.F.R. § 155.1320(e).
- (c) The Departments will recover unused pass-through funding. The State must comply with all necessary steps to facilitate the recovery of such amounts by the Departments within a prompt timeframe.



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James V. McDonald  
Commissioner  
New York State Department of Health  
State of New York

Date: January 15, 2025



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Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services

Date: January 15, 2025



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Aviva Aron-Dine  
Deputy Assistant Secretary, Tax Policy  
U.S. Department of the Treasury

Date: January 15, 2025