

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



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January 27, 2022

**VIA ELECTRONIC MAIL:** [grace.arnold@state.mn.us](mailto:grace.arnold@state.mn.us)

Grace Arnold  
Commissioner  
Minnesota Department of Commerce  
85 7<sup>th</sup> Place East, Suite 280  
Saint Paul, MN 55101

Dear Commissioner Arnold:

Thank you for your submission on December 22, 2021 of Minnesota's waiver extension application for a State Innovation Waiver under section 1332 of the Patient Protection and 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).

Minnesota's currently approved waiver of the ACA requirement for the single risk pool contained in ACA section 1312(c)(1)<sup>1</sup> allows the state to operate a state-based reinsurance program for the individual health insurance market from January 1, 2018 through December 31, 2022.<sup>2</sup> Minnesota's waiver extension plan seeks to waive ACA section 1312(c)(1) and continue implementation of its state reinsurance program for an additional five years, for plan years 2023 through 2027. Minnesota is not otherwise seeking to make changes to its section 1332 reinsurance waiver program.

Consistent with 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, the processes and procedures for extension requests recently finalized in rulemaking,<sup>3</sup> and the next steps outlined in the Departments' January 13, 2022 letter in response to Minnesota's waiver extension letter of intent (LOI),<sup>4</sup> the Departments have conducted a preliminary review of the waiver extension application similar to the review process for new waiver applications outlined in 31 C.F.R. § 33.108(c) and 45 C.F.R. § 155.1308(c), and have made a determination that Minnesota's waiver extension application is incomplete.

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<sup>1</sup> Minnesota's currently approved waiver waives the individual market's single risk pool requirement to the extent it would otherwise require excluding total expected state reinsurance payments from the market-wide index rate.

<sup>2</sup> <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Approval-Letter-MN.pdf>

<sup>3</sup> See Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond; Final Rule, 86 FR 53412 at 53483 – 53486 (Sept. 27, 2021). Also see STC 9 in the October 2017 Minnesota Section 1332 Waiver Specific Terms and Conditions, available at:

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Approval-Letter-MN.pdf>

<sup>4</sup> <https://www.cms.gov/files/document/1332-mn-loi-extension-response-letter11322.pdf>

Specifically, we are providing you with notice that the following elements are missing or incomplete:

- 1) *Legislative Authority*: Minnesota's waiver extension application is missing evidence of sufficient authority under state law(s) to comply with ACA section 1332(b)(2)(A) for purposes of implementing the requested waiver extension. The state's waiver extension application notes that details on state legislative authority are pending, with activity expected in the first half of 2022. Please provide evidence of enabling legislation for the requested waiver extension once available;
- 2) *State Public Input*: Minnesota's waiver extension application is missing an explanation and evidence of the process to ensure meaningful public input on the extension request at the state level. The state's waiver extension application notes that once state legislation is enacted, the proposed waiver extension application will be publicly posted and public hearings will be scheduled in compliance with 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312. Please provide an explanation and evidence of the process to ensure meaningful public input on the extension request at the state level, which must include:
  - a. For a state with one or more Federally-recognized Indian tribes within its borders, a separate process for meaningful consultation with such tribes, and 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 (2) 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, the state may 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 section 1332 waiver extension request and on the progress of its approved waiver plan.<sup>5</sup>

The Departments welcome Minnesota's submission of a revised section 1332 waiver extension application that includes the missing information identified above. As provided in the Departments' January 13, 2022 letter and similar to the review of new section waiver applications outlined in 31 C.F.R. § 33.108(c) and 45 C.F.R. § 155.1308(c), upon receipt of the revised waiver extension application, the Departments will conduct a preliminary review within 30 days to determine if the revised waiver extension application is complete.

We look forward to continuing to work with you and please do not hesitate to contact us if you have any questions.

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<sup>5</sup> In the event of an emergent situation, the state may seek to use the flexibilities provided at 31 C.F.R. § 33.118(a) and 45 C.F.R. § 155.1318(a), to modify, in part, the public participation requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen Montz". The signature is fluid and cursive, with the first name "Ellen" and the last name "Montz" clearly distinguishable.

Ellen Montz, Ph.D.

Director

Center for Consumer Information and Insurance Oversight

Deputy Administrator, Centers for Medicare & Medicaid Services

Cc: Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury  
The Honorable Tim Walz, Governor, State of Minnesota  
Julia Dreier, Deputy Commissioner, Minnesota Department of Commerce  
Peter Brickwedde, Assistant Commissioner of Government and External Affairs, Minnesota  
Department of Commerce