



**Department  
of Health**

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Commissioner

**JOHANNE E. MORNE, M.S.**  
Executive Deputy Commissioner

November 26, 2024

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

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

Dear Secretary Yellen and Secretary Becerra,

The State of New York requests approval to set the term of the approved Section 1332 State Innovation Waiver in alignment with the amendment approved on September 25, 2024 for coverage starting January 1, 2025. Specifically, we are requesting approval for the waiver amendment to be in effect for a full five-year term from the implementation date of January 1, 2025 through December 31, 2029.

The contact for this application is Danielle Holahan, Executive Director of the NY State of Health Marketplace.

We appreciate the Departments' commitment and ongoing partnership in expanding access and affordability of healthcare coverage to more New Yorkers.

Sincerely,

James V. McDonald, M.D., M.P.H.  
Commissioner of Health

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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December 11, 2024

**VIA ELECTRONIC MAIL:** [James.McDonald@health.ny.gov](mailto:James.McDonald@health.ny.gov)

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

Dear Commissioner McDonald:

Thank you for your November 27, 2024, letter of intent (LOI) to apply for an extension of New York's amended 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 New York (also referred to as the "state") has informed them at least one year prior to the waiver's end date, as required by the specific terms and conditions (STCs) governing the state's waiver,<sup>1</sup> 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 section 36B of the Internal Revenue Code (IRC) and sections 1402 and 1312(c)(1) of the ACA<sup>2</sup> allow the state to operate a coverage program, the

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<sup>1</sup> See STC 10. The applicable STCs are available here: <https://www.cms.gov/files/document/new-york-state-1332-waiver-amendment-approval-letter-and-stcs.pdf>.

<sup>2</sup> New York's approved waiver, including the approved waiver amendment, 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 New York State of Health, New York's state-based marketplace ("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%

Essential Plan (EP) Expansion, from January 1, 2025, through December 31, 2028.<sup>3</sup> As described in the LOI, the state seeks to waive section 36B of the IRC and sections 1402 and 1312(c)(1) of the ACA for an additional waiver period of one year from January 1, 2029, through December 31, 2029. The state aims to continue implementing the section 1332 waiver to support New York's continued success in making health insurance more affordable and accessible to its residents.

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 enclosed document further outlines the application requirements for the state's waiver extension. Once the Departments receive the state's waiver extension application, they 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 nor an intent to approve or disapprove 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](mailto:Lina.Rashid@cms.hhs.gov) or [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

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of the 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 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 the 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.

<sup>3</sup> New York's currently approved waiver created a coverage program, the EP Expansion, that generally mirrors the state's Basic Health Program (BHP), 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 the FPL who would otherwise be enrolled in Medicaid coverage or in a state-funded health insurance program absent the waiver. The currently approved waiver plan also includes the approved waiver amendment, which included state subsidies for certain Exchange enrollees under the waiver plan.

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 initial "E".

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

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

Enclosure

## Specific Requirements for New York's Waiver Extension Application

The Departments will conduct a preliminary review of New York's (hereafter referred to as the "state's") 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](mailto:stateinnovationwaivers@cms.hhs.gov). If the Departments determine 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. 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.