



**COLORADO**

**Department of  
Regulatory Agencies**

Division of Insurance

The Honorable Steven Mnuchin  
Secretary of the Treasury  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

The Honorable Alex Azar  
Secretary of Health and Human Services  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

November 10, 2020

Dear Secretary Mnuchin and Secretary Azar,

The State of Colorado is pleased to submit this Letter of Intent to apply for a five-year extension of our Section 1332 State Innovation Waiver. Currently, Section 1312(c)(1) of the Affordable Care Act (ACA) is waived for 2020 and 2021 to allow the state to implement a reinsurance program. We are requesting that Section 1312(c)(1) be waived for an additional five years, for the period of 2022 through 2026. Aside from the timeframe, we are not proposing any major changes to our waiver. The waiver will continue to adhere to the guardrails established by Section 1332, as well as principles laid out in guidance from the Centers for Medicare and Medicaid Services (CMS), and will not affect other provisions of the ACA.

Colorado's state-based reinsurance program was established by Colorado House Bill 19-1168 to address rising health insurance premiums in our state. It was bipartisan legislation, garnering support from Democrats and Republicans in both chambers of the Assembly. In Summer 2020, the Colorado General Assembly passed, and Governor Jared Polis signed Senate Bill 20-215, establishing the Colorado Health Insurance Affordability Enterprise. SB20-215 allows the State to apply for a five-year extension of our 1332 waiver to continue reinsurance through 2026.

Colorado's reinsurance program was highly successful in its first year (2020). It reduced premiums twenty percent on average statewide for Coloradans who purchase insurance on the individual market, achieving the premium reduction goals in HB19-1168 and our Section 1332 waiver application. Approximately 150,000 Coloradans saw their premiums decrease from 2019 to 2020 as a result of reinsurance. Our program's geographic tier structure reduced premiums more in areas of the state that historically have had the highest premiums - particularly in rural areas. The program also brought stability to Colorado's individual health insurance market, with all insurers remaining in the market from 2019 to 2020 and one new insurer offering plans in 2020. Colorado's 2021 individual market premiums are nearly twenty-one percent lower than they would be without reinsurance, indicating we are succeeding in keeping premiums down.

The Colorado Division of Insurance administers the reinsurance program and has integrated it into regular Division operations. The Division hired a reinsurance program director in Fall 2019, and worked



with the actuarial team to incorporate reinsurance into the Division's annual rate review process. We have also partnered with the Colorado Department of Health Care Policy and Finance as well as Connect for Health Colorado (state-based exchange) to streamline data collection and reporting processes for the reinsurance program. Additionally, the Division signed an agreement with CMS to use the EDGE database for reinsurance claims processing and payment calculations. These partnerships help reduce administrative and regulatory burden on all parties involved in Colorado's reinsurance program, thus minimizing waste and ensuring we pass along the maximum benefits to Colorado consumers.

Our goals for Year Two and beyond, center around maintaining the premium reductions achieved in the program's first year. During the 2021 rate review period, we implemented a more scrutinous process for analyzing the impact of reinsurance on premium rates. We plan to implement additional process improvements for the 2022 rate review, including a more extensive analysis of reinsurance impact by geographic rating region and plan metal tier. We also plan to use the care management protocols carriers submitted during the 2021 rate review to better understand and align carriers' strategies for managing care and cost of care for their highest cost members (i.e., members whose claims are eligible for reinsurance). Lastly, we have contracted with an actuarial firm to study the impact of reinsurance on the subsidy-eligible enrollee population and to develop policies to mitigate any negative impacts on this group. These process improvements will strengthen our reinsurance program and support Colorado's broader efforts to make health care more affordable for our residents.

We are happy to have the opportunity to extend Colorado's successful reinsurance program for an additional five years, through 2026. The program has reduced premiums for thousands of Coloradans and will build upon that success with continued federal support through a Section 1332 waiver extension. We intend to submit our extension application by May 31, 2021.

Thank you in advance for considering our application. We look forward to engaging with you in the coming months.

Sincerely,



Michael Conway  
Commissioner of 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



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December 28, 2020

**VIA ELECTRONIC MAIL:** [michael.conway@state.co.us](mailto:michael.conway@state.co.us)

Michael Conway  
Commissioner of Insurance  
Colorado Division of Insurance  
1560 Broadway, Suite 850  
Denver, CO 80202

Dear Commissioner Conway:

Thank you for your November 10, 2020 letter of intent (LOI) to apply for an extension of Colorado's State Relief and Empowerment Waiver (section 1332 waiver) under section 1332 of the Patient Protection and Affordable Care Act (PPACA). I am sending this letter from the Center for Consumer Information and Insurance Oversight (CCIIO) within the Centers for Medicare & Medicaid Services (CMS) within 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 (STC 9 in Colorado's original approval letter), of the state's intent to apply for continuation of the waiver. The Departments confirm that Colorado'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 STCs.

Colorado's currently approved waiver of the PPACA requirement for the single risk pool contained in PPACA 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, 2021. As described in the LOI, Colorado seeks to waive PPACA section 1312(c)(1) for an additional waiver period of five years beginning January 1, 2022 through December 31, 2026. The state aims to maintain the current level of premium reductions during the first year of the extension period, and plans to implement process improvements to further strengthen its reinsurance program during the second year and beyond. The state contends that a reduction in rates in the individual market will reduce federal spending on premium tax credits (PTCs), which would allow the state to receive federal pass-through funding through the section 1332 waiver.

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 Colorado has indicated it does not intend to change its waiver plan, Colorado 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 2021.

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](mailto:Lina.Rashid@cms.hhs.gov), Michelle Koltov at [Michelle.Koltov@cms.hhs.gov](mailto:Michelle.Koltov@cms.hhs.gov), or [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,

A handwritten signature in black ink, appearing to read "Jeffrey Grant". The signature is fluid and cursive, with a long horizontal line extending from the start of the name.

Jeffrey Grant  
Deputy Director for Operations  
Center for Consumer Information & Insurance Oversight (CCIIO)  
Centers for Medicare & Medicaid Services (CMS)

Cc: David Kautter, Assistant Secretary for Tax Policy, U.S. Department of the Treasury  
Jared Polis, Governor, State of Colorado

Enclosure

## Specific Requirements for Colorado's Waiver Extension Application

The Departments will review Colorado'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). After determining 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. Colorado'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 PPACA 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,<sup>1</sup> 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.

Note, the state does not have to meet all the requirements outlined for a new waiver application (e.g. holding two public hearings and providing a 30-day comment period) to fulfill paragraph (5). The state may determine how best to ensure the opportunity for meaningful public input on the extension request. For example, the

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<sup>1</sup> Recognizing that barriers may exist for states during the public health emergency for COVID-19, please see additional flexibilities available: Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Interim Final Rule, 85 FR 71142 at 71176. Also see 31 C.F.R. § 33.118 and 45 C.F.R. § 155.1318.

state may choose to hold a hearing or provide an amended comment period, or some combination of both. If the state opts to conduct a hearing, it can use its annual public forum for the dual purpose of gathering input on 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.