

DEPARTMENT OF HEALTH & 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: State of New Hampshire — Patient Protection and Affordable Care Act Section 1332  
Waiver Approval  
AWARDEE: New Hampshire

I. PREFACE

The following are the specific terms and conditions (STCs) for the State of New Hampshire’s (“the state”) Patient Protection and Affordable Care Act (PPACA) section 1332 State Innovation Waiver (“the waiver”), which has been approved by the U.S. Department of Health & 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 January 1, 2021, through December 31, 2025, unless the waiver is extended as provided by these STCs; however, the Departments reserve the right to amend these STCs when the Departments make the annual determination of the pass-through amount for plan years 2021 through 2025. The state’s application to waive certain provisions of the PPACA, dated April 23, 2020, is specifically incorporated by reference into these STCs, except with regard to any proposal or text in the application that is inconsistent with the Departments’ approval of the waiver or these STCs. The New Hampshire Reinsurance Program is administered by the New Hampshire Health Plan (NHHP) with the New Hampshire Insurance Department (NHID).

**1. PPACA Provisions Waived under Section 1332 State Innovation Waiver.** Section 1312(c)(1) of the Patient Protection and Affordable Care Act (P.L. 111–148) is waived to the extent it would otherwise require excluding total expected state reinsurance payments when establishing the market-wide index rate for the purposes described in the state’s application.

**2. Changes in State Law and Technical Changes to the Reinsurance Program.** The state must inform the Departments of any change in New Hampshire state law or regulations that would impact the waiver, including any changes to the requirements to the New Hampshire Reinsurance Program and any technical changes to the New Hampshire Reinsurance Program, occurring after the date of this approval letter, within seven days of any such changes. Technical changes are changes that do not impact the guardrails or any obligations of the state or the Departments, such as changes to the state-approved program funding level or program parameters like altering the attachment point, cap, coinsurance rate, or eligible conditions. If the Departments determine that the change in state law or regulation or the change to the state reinsurance program is not a technical change but instead would be an amendment, the state must immediately suspend implementation of the change and submit an amendment as set forth in STC 9.

Consistent with the waiver application, the state is responsible for any reconciliation of reinsurance payments that New Hampshire wishes to make to account for any duplicative

reimbursement through New Hampshire Reinsurance Program for the same high-cost claims reimbursed through the HHS-operated risk adjustment program, and this is also considered a technical change to the state reinsurance program.

**3. Funds to Operate New Hampshire's Reinsurance Program.** The New Hampshire Reinsurance Program will be funded through federal pass-through funding and state funding from the state program fund. The state must ensure sufficient funds, on an annual or other appropriate basis, for the New Hampshire Reinsurance Program to operate as described in the state's waiver application.

**4. Compliance with Federal Non-Discrimination Statutes.** The state must comply with all applicable federal statutes relating to non-discrimination. These include 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 PPACA.

**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 PPACA. Further, section 1332(c) of the PPACA 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 PPACA 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, and 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. The Departments will notify the state at least 30 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 comply with state and federal regulatory requirements, including rate review and consumer noticing requirements, and to provide comment. Changes will be considered in force upon the Departments' issuance of the amended STCs. The state must accept the changes in writing within 30 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 laws 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) 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 waiver application and these STCs. In addition, the Departments will promptly share with the state any complaint that they may have received 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 a waiver plan consistent with the following requirements:

- (a) Request for suspension, withdrawal, or termination: If the state wishes the Departments to suspend, withdraw, or terminate all or portions 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 described below). The state must submit its request and draft phase-out plan to the Departments no less than six (6) months 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 30-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 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, an amendment is a change to a waiver plan that is not otherwise allowable under these STCs or that could impact any of the section 1332 statutory guardrails or program design that either is approved or not approved. Such potential changes include, but are not limited to, changes to eligibility, coverage, benefits, premiums, out-of-pocket spending, and cost sharing.
- (b) Amendment Process: To amend a waiver:
  - (1) The state must submit a letter to the Departments to notify 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) in the letter of intent. The

state is encouraged to submit the letter of intent at least 15 months prior to the waiver amendment's proposed implementation date and to engage with the Departments early on in their amendment proposal process. The state may want to submit this letter of intent earlier than 15 months prior to the waiver amendment's proposed implementation date, depending on the complexity of the amendment request.

- (2) The Departments will review the state's letter of intent requesting changes to its waiver plan. Within approximately 30 days of the Departments' receipt of the letter of intent, the Departments will confirm whether the change requested requires an amendment and to indicate the required information that the state would need to submit in its amendment request. This written response will also include whether or not the proposed waiver amendment(s) would be subject to any additional requirements outlined in STC 9(c)(6).
- (3) The state should generally plan to submit its waiver amendment application, as outlined in STC 9(c), no later than the end of the first quarter of the year prior to the year the amendment would take effect in order to allow for sufficient time for review of the application. Consistent with the regulations at 31 C.F.R. § 33.108(b) and 45 C.F.R. § 155.1308(b), the state is required to submit the waiver application sufficiently in advance of the requested waiver implementation date, particularly when the waiver plan impacts premium rates, to allow for an appropriate implementation timeframe. In developing the implementation timeframe for the state waiver plan amendment, the state must maintain uninterrupted operations of the Exchange in the state and provide adequate notice to affected stakeholders and any 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.
- (4) The Departments reserve the right to deny or withhold approval of a state waiver plan amendment 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 by the Departments.

(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 PPACA. The state must furnish such information and analysis regarding the amendment as the Departments may request. An amendment application must include the following:

- (1) A detailed description of the requested amendment, including the impact on the guardrails, and related changes to the waiver program elements as applicable, including sufficient supporting documentation;
- (2) 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. The amendment request must include an explanation and evidence of the process used by the state to ensure meaningful public input. It may be permissible for a state to use its annual public forum for the dual purpose of public input on an amendment application request;

- (3) 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 amendment(s);
- (4) An updated actuarial and/or economic analysis demonstrating how the requested amended waiver will meet section 1332 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;
- (5) An explanation of the impact, if any, of the proposed amendment on pass-through funding; and
- (6) Any further requested information and/or analysis that is determined necessary by the Departments to evaluate the proposed amendment.

**10. State Request for Waiver Extension.** The state must inform the Departments if the state will apply for extension of its waiver at least one year prior to the waiver’s end date. The Departments and the state will engage in further discussions regarding next steps for extension of its waiver. 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). An extension application must include information requested by the Departments, which may include the following, unless otherwise provided in these STCs:

- (a) Updated economic or actuarial analyses for the extension period in a format and manner specified by the Departments;
- (b) Preliminary evaluation data and analysis from the existing waiver program;
- (c) 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;
- (d) An explanation of the process to ensure meaningful public input on the extension request. The state may use its annual public forum for the dual purpose of public input on an extension application request; and
- (e) Other information as requested by the Departments to reach a decision on the requested extension.

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

The Departments may extend an existing reinsurance 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 application was submitted.

If the state does not apply for an extension of the waiver, the Departments will provide guidance on wind-down of the state's waiver consistent with STC 8.

**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. Each such annual report must include:

- (a) The progress of the section 1332 waiver;
- (b) Data sufficient to show compliance with section 1332(b)(1)(A) through (D) of the PPACA;
- (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 section 1332 waiver and action taken in response to such concerns or comments; and
- (d) Other information the Departments determine is necessary to calculate pass-through amounts or to evaluate the waiver.

The state must submit a draft annual report to the Departments within 90 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 30 days of submission to the Departments. Within 60 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 web site within 30 days of approval by the Departments.

*Annual Reports:* The annual reports must include the following:

- (1) Metrics to assist evaluation of the waiver's compliance with the statutory requirements in section 1332(b)(1):
  - a. Actual individual market enrollment in the state.
  - b. Actual average individual market premium rate (i.e., total individual market premiums divided by total member months of all enrollees).
  - c. The 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.
- (2) Technical changes to the New Hampshire Reinsurance Program, including the funding level the program will be operating at for the next plan year, or other program changes as specified in STC 2.
- (3) Notification of changes to state law or regulations that may impact the waiver as specified in STC 2.
- (4) Reporting of:

- a. Federal pass-through funding spent on reinsurance claim payments to issuers from the New Hampshire Reinsurance Program and/or operation of the reinsurance program.
  - b. The unspent balance of federal pass-through funding for the reporting year, if applicable.
- (5) The amount of state funding from the program fund, including but not limited to the state premium assessment, specifically any funds designated by the state to provide reinsurance to issuers that offer individual health benefit plans in the state or any other money from any other source accepted for the benefit of the fund to fully fund the New Hampshire Reinsurance Program for the reporting year.
- (6) A description of any incentives for providers, enrollees, and issuers to continue managing health care cost and claims for individuals eligible for reinsurance.
- (7) A report on the reconciliation (if any) of reinsurance payments that are duplicative of reimbursement through the HHS-operated risk adjustment program high-cost risk pooling mechanism. The report should include the New Hampshire Reinsurance Program reinsurance payment (before reconciliation) for high-cost claims to issuers who also receive payment through the HHS risk adjustment program under the high-cost risk pooling mechanism, the high-cost risk pool payment amount made by HHS for those claims, and the reinsurance true-up amount applied.

*Payment Schedule:* The state will inform the Departments of the New Hampshire Reinsurance Program payment schedule by January 1, 2021.

*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 will submit a report to the Departments on the operation of the New Hampshire Reinsurance Program, including the plan for processing claims, by February 28, 2021. Thereafter, 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 60 days following the end of each calendar quarter. The state can submit its annual report in lieu of their 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 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 30 days prior to the date of the planned public forum. The state may request and submit a justification to do the post award forum virtually in certain circumstances, such as a natural disaster or public health emergency, as long as the other regulatory requirements for meaningful public input are met. 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 regulatory criteria discussed above 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 of the Departments 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 will consider the evaluation costs to the federal government in the deficit neutrality assessment and, if necessary, take them into account in the pass-through funding calculation.

**15. Pass-through Funding.** Under section 1332(a)(3) of the PPACA, the state will be entitled to funding based on the amount of premium tax credits (PTC) that would have been provided to individuals under section 36B of the Internal Revenue Code in the State of New Hampshire absent the waiver, but that will not be provided under the waiver, reduced, if necessary, to ensure deficit neutrality as required by the section 1332(b)(1)(D). The state will receive pass-through funding for the purpose of implementing the state plan under the waiver. Pass-through amounts will be made available in advance of the New Hampshire Reinsurance Program payments to the insurer(s) and no later than April of the applicable calendar year.

Starting with the 2021 plan year and for each plan year thereafter, by September 15<sup>th</sup> or once the state has finalized rates, whichever is later of the year preceding the plan year, the state will provide to the Departments:

- (a) The final second lowest cost silver plan (SLCSP) rates 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);
- (b) The state's estimate of what the final SLCSP rates for a representative individual in each rating area would have been absent approval of this waiver;
- (c) The total amount of all premiums expected to be paid in the non-group market for the plan year;
- (d) What total premiums would have been for the plan year without the waiver;



- (e) Reports of the estimated total reinsurance reimbursements for the reporting year;
- (f) Reports of the total enrollment estimates for the market, both with and without the waiver; and
- (g) An explanation of why the experience for the reporting 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 SLCSF rates, and the estimated impact on enrollment. The state should also explain changes to the estimated reinsurance estimates relative to prior estimates.

The estimated amount of pass-through funding for plan year 2021 will be communicated to the state as soon as practicable, conditional on receipt of items (a) through (g) in the paragraph above by the date specified above, and subject to a final administrative determination by the Department of the Treasury prior to payment. The pass-through amount for plan years 2021 through 2025 will be calculated by the Departments annually (per PPACA section 1332(a)(3)) and reported to the state on the earliest date practicable, conditional on receipt of the SLCSF premium and total premium information (items (a) through (g) above) by September 15<sup>th</sup> of the preceding year.

The pass-through funds cannot be obligated prior to the waiver effective date. The state agrees to use the full amount of pass-through funding for purposes of implementing the state's plan as approved by the Departments, including implementing the New Hampshire Reinsurance Program for 2021 and future years. Moreover, to the extent pass-through funding exceeds the amount necessary for the reinsurance program to cover individual claim payments to issuers under the New Hampshire Reinsurance Program and/or operation of the reinsurance program, the remaining funds must be carried forward and used for purposes of implementing the state's plan under the waiver, such as making reinsurance payments in the next calendar year.

If the waiver is not extended, unused pass-through funds will be recovered promptly following the end of the approved waiver period, December 31, 2025. The state will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

**16. The Departments' Right to Amend, Suspend, or Terminate.** Under 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 specific statutory requirements or "guardrails" related to coverage, affordability, comprehensiveness, or deficit neutrality.

- (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) Unused pass-through funding will be recovered. The state will comply with all necessary steps to facilitate the recovery within a prompt timeframe.



Christopher R. Nicolopoulos  
Insurance Commissioner  
New Hampshire Insurance Department

Date: 8/11/2020



Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health & Human Services

Date: August 5, 2020

\_\_\_\_\_  
David Kautter  
Assistant Secretary for Tax Policy  
U.S. Department of the Treasury

Date: \_\_\_\_\_