

Colorado: State Innovation Waiver - Amendment

June 23, 2022

The U.S. Department of Health & Human Services and the U.S. Department of the Treasury (collectively, the Departments) approved Colorado's application for an amendment of its State Innovation Waiver under section 1332 of the Affordable Care Act (ACA) (referred to as a "section 1332 waiver"). The amendment will allow for the full implementation of the Colorado Option, which is an innovative model for health insurance that promotes competition and health equity by combining several key components: standardized benefit plans; required premium reduction targets; regulatory and programmatic mechanisms as a backstop to ensure providers, hospitals, and issuers meet those targets; and state subsidies to lower out-of-pocket costs for individuals and families enrolling in coverage through the state's Exchange and for those not currently eligible for federal subsidies under the ACA. The amended waiver also extends the state's existing state-based reinsurance waiver program through 2027.

Colorado's section 1332 waiver amendment application requested a waiver of ACA sections 1312(c)(1) and 1312(c)(2) as implemented at 45 C.F.R. § 156.80 to the extent they would otherwise prohibit plan-level rating variation(s) for the Colorado Option in the individual and small group markets for plan years (PY) 2023 through 2027. The Colorado Option is a state-based standard health benefit plan offered on the state's Health Insurance Marketplace, Connect for Health Colorado, designed to make health care more affordable, comprehensive, equitable, and accessible for Coloradans. The Colorado Option legislation establishes a set of premium reduction targets and better regulatory and programmatic mechanisms as a backstop to ensure providers, hospitals and issuers meet those targets. The amended waiver is projected to create significant savings in premium tax credit (PTC) expenditures for the federal government. Under the approved waiver amendment, these savings will be shared with the state in the form of pass-through funding to support the state's reinsurance program and state-based subsidies for Coloradans who may struggle with unaffordable out-of-pocket costs, including enhanced subsidies for many Coloradans who already purchase insurance on Colorado's state-based marketplace and subsidies for those not eligible for PTC. As part of its amendment, Colorado also seeks to extend its section 1332 individual market reinsurance waiver program (waiving ACA section 1312(c)(1) to the extent necessary to operate the program) through 2027, but is not otherwise seeking to make changes to its approved reinsurance program.

Actuarial analysis performed on behalf of Colorado and submitted as part of its waiver amendment application projected that, in 2023, premiums will be on average 22.3% lower across the state than they will be absent the amended waiver. As a result of Colorado's waiver amendment, the state will receive pass-through funding based on the PTC savings realized by the federal government due to lower premiums and lower resulting PTC expenditures for individual health insurance coverage, net of any federal costs attributable to the waiver. The waiver amendment builds off of the state's existing reinsurance waiver program, which has

achieved an approximately 20% average statewide premium reduction annually in PYs 2020 through 2022 compared to without the existing waiver.

The Departments have determined that Colorado's section 1332 amended waiver plan meets the requirements outlined in section 1332(b)(1) of the ACA. Specifically, the section 1332 amended waiver is projected:

- to provide coverage at least as comprehensive as coverage provided without the waiver;
- to provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided without the waiver;
- to provide coverage to at least a comparable number of people as would be provided without the waiver; and
- to not increase the federal deficit.

The amendment of Colorado's State Innovation Waiver under section 1332 of the ACA is approved subject to Colorado accepting specific terms and conditions (STCs). This waiver amendment approval is effective for January 1, 2023 through December 31, 2027.

Summary of Colorado's Application for an Amendment of its State Innovation Waiver under Section 1332 of the ACA

Colorado's application for an amendment of its State Innovation Waiver under section 1332 of the ACA seeks to waive sections 1312(c)(1) and 1312(c)(2) of the ACA as implemented at 45 C.F.R. § 156.80—which otherwise prohibit plan-level rating variation(s) in the individual and small group markets—in order to implement the Colorado Option with required premium reduction targets for PYs 2023 through 2027. As described in the state's amendment application, under state law, the Colorado Option places three main requirements on issuers offering plans in the individual or small group markets in the state:

- 1) In any county where an issuer offers a plan in the individual or small group market, the issuer must also offer a Colorado Option Standardized Plan, as designed by the state;
- 2) Colorado Option plans must meet network adequacy requirements, including being culturally responsive and reflective of the diversity of enrollees in the network's service area; and
- 3) As reflected in state law¹ and the approved waiver amendment, compared to 2021 plan rates, Colorado Option plans are required to reduce premiums by 5% in the first year (2023), 10% in the second year (2024), and 15% in the third year (2025). After 2025, premiums may only increase by national medical inflation. In addition, the Colorado Division of Insurance has new and existing programmatic and regulatory authorities to support the premium reduction targets as a backstop if issuers and providers do not reach the established targets. Examples include requiring changes to filed plans and

¹ See Colo. Rev. Stat. § 10-16-1306(e). Also see Colorado HB21-1232, available at: https://leg.colorado.gov/sites/default/files/documents/2021A/bills/sl/2021a_sl_241.pdf

providers contracts, levying fines on hospitals, and requiring additional public rate hearings.

Colorado will also continue to operate its state-based reinsurance program under its section 1332 waiver² as a traditional, claims-based reinsurance program that reimburses qualifying individual market health insurers for a percentage of an enrollee's claims costs exceeding a specified threshold (or "attachment point") and up to a specified ceiling (or "reinsurance cap"). More information about the state's reinsurance program is available [here](#).

As a result of the Departments' approval of Colorado's section 1332 waiver amendment application, individual market consumers are expected to continue seeing lower premiums, which should attract new consumers while also retaining current consumers in the individual market. Colorado projects that, under the amended waiver over its approved five-year period, the Colorado Option alone will lower statewide average premiums by up to 14% and increase individual market enrollment by up to 10,000 individuals (or up to an 11% increase) when compared to the without waiver scenario. New enrollees due to the waiver are expected to be those who are currently ineligible for ACA subsidies. The state also projects that, under the Colorado Option and Colorado Reinsurance Program, average statewide individual market premiums will be about 22.3% lower in PY 2023 than they would be without the amended waiver. In addition, Colorado predicts that individual market enrollment will be about 4.1% higher in PY 2023 than it would be without the amended waiver, due to lower premiums resulting from stabilization of the individual market. These projections were certified by independent actuaries and reviewed by the Departments.

Because the Colorado Option and Colorado Reinsurance Program, together under the amended waiver, are expected to lower premiums on the second-lowest cost silver plan, the plan used to establish the value of the PTC, the federal government will spend less on PTC under the amended waiver plan than it would absent a waiver. As such, Colorado will receive pass-through funding to support its amended state waiver plan based on the amount of PTC that would have been provided to Coloradans absent the waiver but will not be provided under the amended waiver. This amount will be reduced, if necessary, to ensure deficit neutrality.

The amended waiver is estimated by the state to produce net federal savings of \$214 million in 2023 and \$1.618 billion over the five-year waiver period. This pass-through funding will cover a substantial portion of state costs for the reinsurance program and state-based subsidy programs. In 2022, outside its waiver, Colorado began implementing a state subsidy program aiming to reduce out-of-pocket cost-sharing for individuals and families purchasing coverage through the state's Exchange. In 2023, the state will use pass-through funding to also support a new state subsidy program for Coloradans not eligible for federal subsidies. Overall, the state's

² Colorado's amendment application also seeks to continue to waive section 1312(c)(1) of the ACA to the extent it would otherwise require excluding total expected state reinsurance payments when establishing the market-wide index rate.

amended waiver plan is projected to result in lower consumer costs, reduce the number of uninsured, and improve health equity in the state.

Section 1332: State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing residents with access to high-quality, affordable health insurance. These waivers provide states with the opportunity to develop strategies that best suit their individual needs. Through innovative thinking tailored to specific state circumstances, states can lower premiums for consumers, improve market stability, and increase consumer choice.

In order for a section 1332 waiver to be approved, the Departments must determine that the waiver meets statutory guardrails to provide coverage that is at least as comprehensive as the coverage provided without the waiver; provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as without the waiver; provide coverage to at least a comparable number of residents as without the waiver; and not increase the federal deficit.

State Innovation Waivers have been available since January 1, 2017; are approved for up to five-year periods; and can be extended. The Departments welcome the opportunity to work with states on section 1332 waivers. States interested in applying for a section 1332 waiver can find application tools and resources, including an application checklist and application templates, on the CMS website [here](#).

The section 1332 waiver amendment approval letter and STCs for Colorado can be found here: https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-