



# Oregon

Kate Brown, Governor

Department of Consumer and Business Services

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March 2, 2021

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

The Honorable Norris Cochran  
Acting Secretary of Health and Human Services  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Secretaries Janet Yellen and Norris Cochran:

The State of Oregon is pleased to submit this letter of intent to apply for a five-year extension of our Section 1332 State Innovation Waiver. Section 1312(c)(1) of the Patient Protection and Affordable Care Act (ACA) is waived for years 2018 through 2022 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 2023 through 2027. Other than the extension, we are not proposing significant changes to our waiver. The waiver will continue to adhere to the guardrails established by Section 1332 and principles laid out in guidance from the Centers for Medicare and Medicaid Services (CMS).

In 2017, the Oregon State Legislature passed and Gov. Kate Brown signed House Bill 2391, establishing the Oregon Reinsurance Program (ORP) to address rising health insurance premiums in our state. It was bipartisan legislation, garnering support from Democrats and Republicans in both chambers of the Legislature. HB 2010 (2019) enhanced the program by allowing the state to apply for a five-year extension of our 1332 waiver to continue reinsurance through 2027.

Successful since its inception in 2018, ORP has reduced premium rates by 7.5 percent (2018), 7.5 percent (2019), and 8.5 percent (2020) for Oregonians who purchased health insurance in the individual market. Oregon continues to meet the expectations of HB 2010 (2019) to deliver high-quality health care to residents throughout the state and fulfill the guidance outlined in the State Relief and Empowerment guardrails.

Oregon's individual market enrollment - on and off the Exchange - for years 2018 (197,037), 2019 (183,289), and 2020 (178,821) demonstrates the broad range of health care options

offered to our residents. As a result of the strong individual market presence, Oregonians saw their premiums decreased because of the ORP. Our program notably improved rate stability and plan options for the rural areas of the state that historically have had the highest premiums. Even when the individual mandate penalty was reduced to \$0, the Patient Protection and Affordable Care Act 1332 Waiver brought stability to Oregon's individual health insurance market. Seven insurers have remained in the market since the program's inception.

Our goals for year five and beyond center on maintaining the premium reductions achieved in the program's previous years. During the 2021 rate review period, we implemented a more updated analytical process to review 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's effect 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). Finally, we have contracted with NovaRest Actuarial Consulting to study the effect of reinsurance on the subsidy-eligible enrollee population and to develop policies to mitigate any negative effects on this group. These process improvements will strengthen our reinsurance program and support Oregon's broader efforts to make health care more affordable for our residents.

Oregon's successful reinsurance program established a stable and reliable Waiver, which continues to assist eligible health insurers with high cost health care claims. The program has reduced premiums for thousands of Oregonians and will build upon that success with continued federal support through a Section 1332 waiver extension through 2027. We intend to submit our extension application by Nov. 30, 2021.

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

Sincerely,



Andrew R. Stolfi  
Director and Insurance Commissioner

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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April 7, 2021

**VIA ELECTRONIC MAIL:** [Andrew.Stolfi@oregon.gov](mailto:Andrew.Stolfi@oregon.gov)

Andrew Stolfi  
Director and Insurance Commissioner  
Department of Consumer and Business Services  
350 Winter Street NE  
Salem, OR 97309

Dear Commissioner Stolfi:

Thank you for your March 2, 2021 letter of intent (LOI) to apply for an extension of Oregon's 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 & 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 (STCs) governing Oregon's waiver,<sup>1</sup> of the state's intent to apply for continuation of the waiver. The Departments confirm that Oregon'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.

Oregon's currently approved waiver of the ACA requirement for the single risk pool contained in ACA section 1312(c)(1) allows the state to operate a state-based reinsurance program for the individual health insurance market from January 1, 2018 through December 31, 2022. As described in the LOI, Oregon seeks to waive ACA section 1312(c)(1) for an additional waiver period of five years beginning January 1, 2023 through December 31, 2027. The state aims to maintain the premium reductions achieved thus far, and plans to implement process improvements to further strengthen its reinsurance program in year five of the original waiver period and beyond.

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<sup>1</sup> See STC 9. The applicable STCs are available here: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Approval-Letter-OR.pdf>

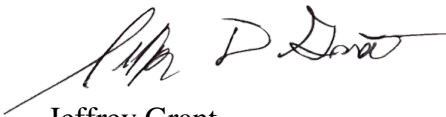
A waiver extension is an extension of the existing waiver terms and does not propose any changes to the existing waiver that are not otherwise allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design. Given that Oregon has indicated it does not intend to change its waiver plan, Oregon 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 2022.

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,



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

Cc: Mark Mazur, Deputy Assistant Secretary for Tax Policy, U.S. Department of the Treasury  
The Honorable Kate Brown, Governor, State of Oregon

Enclosure

## Specific Requirements for Oregon's Waiver Extension Application

The Departments will conduct a preliminary review of Oregon'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 Department of Health and Human Services 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. Oregon'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,<sup>2</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.

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.,

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<sup>2</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.

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.