

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: Commonwealth of Virginia— Patient Protection and Affordable Care Act Section 1332  
Waiver Approval  
AWARDEE: The Commonwealth of Virginia

I. PREFACE

The following are the specific terms and conditions (STCs) for the Commonwealth of Virginia State Corporation Commission (hereafter referred to as the “state”) Patient Protection and Affordable Care Act (ACA)<sup>3</sup> section 1332 State Innovation Waiver to implement the Commonwealth Health Insurance Reinsurance Program (hereafter referred to as “the waiver” or “the waiver plan”), 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, 2023, through December 31, 2027, unless the waiver is extended, otherwise amended, suspended, or terminated by the parties in accordance with the applicable processes set forth in and 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 2023 through 2027. The state’s waiver plan application to waive certain provisions of the ACA, dated December 30, 2021, is specifically incorporated by reference into these STCs, except with regard to any proposal or text in the waiver plan that is inconsistent with the Departments’ approval of the waiver or these STCs.

**1. ACA Provisions Waived under Section 1332 State Innovation Waiver (Section 1332 waiver).** Section 1312(c)(1) of the ACA 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 waiver.

**2. Changes in State Law and Technical Changes to the Waiver.** The state must inform the Departments of any change in state law or regulations that could impact the waiver, including any changes to the requirements of the state waiver plan, or any technical changes to the waiver, occurring after the date of this approval letter, within seven days of any such changes. Technical changes are changes that do not impact the statutory guardrails (as set forth in section 1332(b)(1)(A)-(D) of the ACA) 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 waiver plan is not a technical

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<sup>3</sup> The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In these STCs, the two statutes are referred to collectively as the “Patient Protection and Affordable Care Act” or “ACA.”

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 state's waiver, the state is responsible for any reconciliation of reinsurance payments that it wishes to make to account for any duplicative reimbursement through the state's reinsurance program for the same high-cost claims reimbursed through the HHS-operated risk adjustment program. This is also considered a technical change to the state reinsurance program.

**3. Funds to Operate the Waiver.** The state waiver plan will be funded through a combination of federal pass-through funding and state funding from the Commonwealth Health Reinsurance Program Special Fund, as identified in section 38.2-6604 of the Code of Virginia. The state must ensure sufficient funds are available on an annual basis for the waiver to operate as described in the state's waiver plan.

The Departments acknowledge that Virginia's state laws and budget cycle prohibit the state from committing funds for future years' budgets outside of its present biennial budget cycle (which runs from July 1 through June 30 of the second year).

The Departments further acknowledge that, as of the date of the execution of these STCs, Virginia has not appropriated any state funding, other than administrative funds, toward the operation of the state waiver plan, either in the current biennial budget cycle or in the next biennial budget cycle.<sup>4</sup>

Therefore, the state must inform and report to the Departments as to whether the state has met certain budget milestones as outlined in STC 11 in order to demonstrate the state's progress in securing the necessary state funding for the waiver. The state will be considered to have secured funding for a given plan year once the state Appropriations Act, including funding for the waiver, has been enacted into law.

**4. Compliance with Federal Non-Discrimination Statutes.** The state must comply with all applicable federal statutes relating to non-discrimination. These include, but are not limited to, 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 ACA.

**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 ACA. Further, section 1332(c) of the ACA 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 ACA does not grant the Departments authority to

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<sup>4</sup> Enactment Clause five (5) of the enabling legislation (Chapter 480 of the 2021 Virginia Acts of Assembly, Special Session 1) demonstrates legislative support for the waiver plan, but it does not operate to legally require Virginia's legislature provide sufficient state funding for the operation of the state waiver plan.

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, or 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 thirty (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 come into compliance with state and federal requirements (including rate review and consumer noticing requirements), and to provide comment, if applicable. Changes will be considered in force upon the Departments' issuance of amended STCs. The state must accept the changes in writing within thirty (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 law 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) identified in STC 1 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 state's waiver and these STCs. In addition, the Departments will promptly share with the state any complaint that they may receive 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 its waiver plan consistent with the following requirements:

- (a) Request for suspension, withdrawal, or termination: If the state wishes to suspend, withdraw, or terminate all or any portion(s) 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, as 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 thirty (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 fourteen (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 and per 31 C.F.R. § 33.130(a) and 45 C.F.R. § 155.1330(a), an amendment is a change to a waiver plan that is not otherwise allowable under these STCs, a change that could impact any of the statutory guardrails, or a change to the program design for an approved waiver. Such potential changes include, but are not limited to, changes to eligibility, coverage, benefits, premiums, out-of-pocket spending, and cost sharing.
- (b) Amendment Request Submission Process: Consistent with 31 C.F.R. § 33.130 and 45 C.F.R. § 155.1330, to amend a waiver the state must comply with the following requirements:
  - (1) The state must submit a letter to the Departments notifying 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), including the proposed implementation date(s), in its letter of intent. The Departments encourage the state to submit its letter of intent at least fifteen (15) months prior to the waiver amendment's proposed implementation date and to engage with the Departments early in its development of a potential waiver amendment. The state may wish to submit this letter of intent more than fifteen (15) months prior to the waiver amendment's proposed implementation date, depending on the complexity of the amendment request and the timeline for implementation, among other factors.
  - (2) The Departments will review the state's letter of intent requesting changes to its waiver plan. Within approximately thirty (30) days of the Departments' receipt of the state's letter of intent, the Departments will respond to the state and confirm whether the change requested is a waiver amendment, as well as identify the information the state needs to submit in its waiver amendment request. This written response will also include whether the proposed waiver amendment(s) would be subject to any additional or different requirements consistent with STC 9(c)(7).
    - a. For example, depending on the complexity of the amendment request, scope of changes from the waiver plan, operational/technical changes, or implementation considerations, the Departments may impose requirements similar to those specified in 31 C.F.R § 33.108(f) and 45 C.F.R. § 155.1308(f) for new section 1332 waiver applications.

- (3) The state should generally plan to submit its waiver amendment request in writing in electronic format, as outlined in STC 9(c), no later than nine (9) months prior to the waiver amendment's proposed implementation date in order to allow for sufficient time for review of the waiver amendment request. Similar to the regulations at 31 C.F.R. § 33.108(b) and 45 C.F.R. § 155.1308(b) for new waiver applications, the state must submit the waiver amendment request sufficiently in advance of the requested waiver amendment implementation date, particularly when the waiver plan or requested amendment could impact premium rates, to allow for an appropriate review and implementation timeframe. Depending on the complexity of the amendment request, the state may want to submit the amendment request earlier than nine (9) months prior to implementation. In developing the implementation timeframe for its waiver amendment request, the state must maintain uninterrupted operations of the Exchange in the state and provide adequate notice to affected stakeholders and 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 amendment request.
- (4) The Departments reserve the right to deny or withhold approval of a state waiver amendment request 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 from the Secretaries.

(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 ACA. The state must furnish such information and analysis regarding the proposed waiver amendment that is necessary to permit the Departments to evaluate the request. A waiver amendment request must include the following:

- (1) A detailed description of the requested amendment, including the time period for the proposed amended waiver, impact on the statutory guardrails, the scope of the proposed amendment to the waiver plan—including whether the state seeks to waive any new provisions and the rationale for the waiver—and related changes to the waiver plan elements as applicable, including sufficient supporting documentation;
- (2) An explanation and evidence of the process used by the state to ensure meaningful public input on the proposed waiver amendment request. 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. It may be permissible for a state to use its annual public forum required under 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c) for the dual purpose of soliciting public input on a proposed waiver amendment request and on the progress of its waiver plan;<sup>5</sup>

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<sup>5</sup> In the event of an emergent situation, the state may seek to use the flexibilities provided at 31 C.F.R. § 33.118(a) and 45 C.F.R. § 155.1318(a), in part, to modify the public participation requirements. For example, in an emergent situation that impacts or otherwise limits in-person gatherings, a state could request to host its annual public forum or other events intended to solicit public feedback virtually while meeting the other applicable requirements.

- (3) Evidence of sufficient authority under state law(s) in order to meet the requirement in section 1332(b)(2)(A) of the ACA for purposes of pursuing the waiver amendment request;
- (4) An implementation plan with operational details (if appropriate) to demonstrate that the waiver would maintain uninterrupted operations of the Exchange in the state, and provision of adequate notice for stakeholders and issuers of health insurance plans that would be (or may be) affected by the proposed amendment to take necessary action based on approval of the waiver amendment request;
- (5) An updated actuarial and/or economic analysis demonstrating how the waiver, as amended, will meet the 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;
- (6) An explanation of the estimated impact, if any, of the waiver amendment on pass-through funding, as well as any new proposed uses for pass-through funding if applicable; and
- (7) Any further requested information and/or analysis that is determined necessary by the Departments to evaluate the waiver amendment request.

#### **10. State Request for Waiver Extension.**

- (a) Definition: For purposes of these STCs and per 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, an extension is an extension of an approved waiver under the existing waiver terms.

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

- (b) Extension Request Submission Process: Consistent with 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, to extend the waiver the state must comply with the following requirements:
  - (1) The state must inform the Departments if the state will apply for an extension of its waiver at least one year prior to the waiver’s end date. The state must submit a letter of intent in electronic format to the Departments to notify them in writing of its intent to request an extension of its waiver plan. The state must include a detailed description of the requested extension period in the letter of intent. The Departments will then review the state’s letter of intent request. Within approximately thirty (30) days of the Departments’ receipt of the letter of intent, the Departments will respond to the state and confirm whether the extension request will be considered an extension request and, if applicable, whether the

request includes changes that would be considered an amendment request subject to the separate process and requirements set forth in STC 9. The Departments' response will also identify the information the state needs to submit in its waiver extension request.

- (2) The state must submit its waiver extension request in writing in electronic format, consistent with the format and manner requirements applicable to initial waiver applications under 31 C.F.R. § 33.108(a) and 45 C.F.R. § 155.1308(a).
- (3) An extension request shall be deemed granted unless the Secretaries, within ninety (90) days after the date of the state's submission of a complete waiver extension request, either deny such request in writing or inform the state in writing with respect to any additional information needed to make a final determination with respect to the request.
- (4) The Departments reserve the right to deny a state's waiver extension request 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.

(c) Content of Extension Application: All extension applications are subject to approval at the discretion of the Secretaries in accordance with section 1332 of the ACA. The state must furnish information and analysis regarding the proposed waiver extension that is necessary to permit the Departments to evaluate the request. 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). A waiver extension request may be required to include the following information:

- (1) Updated economic or actuarial analyses for the requested extension period in a format and manner specified by the Departments;
- (2) Preliminary evaluation data and analysis from the existing waiver;
- (3) Evidence of sufficient authority under state law(s) to meet the requirement in section 1332(b)(2)(A) of the ACA for purposes of pursuing the waiver extension request;
- (4) An explanation of the process followed by the state to ensure meaningful public input on the proposed waiver extension request at the state level. It may be permissible for the state to use its annual public forum under 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c) for the dual purpose of soliciting public input on a proposed waiver extension request and on the progress of its waiver plan;<sup>6</sup> and
- (5) Other information as requested by the Departments that is necessary to reach a decision on the waiver extension request.

The Departments will identify the information the state needs to submit as part of its waiver extension request in its response to the state's letter of intent.

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<sup>6</sup> Ibid.

- (d) Temporary Extension of Waivers: The Departments may extend an existing approved 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 extension application was submitted.
- (e) End of Waiver Period: If the state does not submit an extension request before the end of the waiver period consistent with STC 10(b)(1) and (2), the Departments will provide guidance on wind-down of the state's waiver.

**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 waiver;
- (b) Data sufficient to show compliance with section 1332(b)(1)(A) through (D) of the ACA;
- (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 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 ninety (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 thirty (30) days of submission to the Departments. Within sixty (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 thirty (30) days of approval by the Departments.

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

- (a) Metrics to assist evaluation of the waiver's compliance with the statutory requirements in section 1332(b)(1)(A) – (D) of the ACA:
  - (1) Actual individual market enrollment in the state.
  - (2) Actual average individual market premium rate (i.e., total individual market premiums divided by total member months of all enrollees).
  - (3) 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.
- (b) Technical changes to the state's waiver plan, including the funding level the program will be operating at for the next plan year, or other waiver plan changes as specified in STC 2.



(c) Notification of changes to state law or regulations that may impact the waiver as specified in STC 2.

(d) Reporting of:

- (1) Federal pass-through funding spent on reinsurance claim payments to issuers from the waiver and/or operation of the reinsurance program.
- (2) The unspent balance of federal pass-through funding for the reporting year, if applicable.

(e) The amount of state funding from the Commonwealth Health Reinsurance Program Special Fund (Fund), as identified in section 38.2-6604 of the Code of Virginia, 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 state's reinsurance program for the reporting year.

(f) A description of any incentives for providers, enrollees, and issuers to continue managing health care cost and claims for individuals eligible for reinsurance.

(g) *If applicable:* 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 state reinsurance program reinsurance payment (before reconciliation) for high-cost claims to issuers who also receive payment through the HHS-operated 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 state's reinsurance program payment schedule by January 1, 2023.

*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 waiver, including the plan for processing claims, by February 28, 2023. 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 sixty (60) days following the end of each calendar quarter. The state can submit its annual report in lieu of their fourth quarter report.

*Budget Report:* In addition, the state must inform the Departments as to whether the waiver has met certain milestones in the state budget process in order to demonstrate the state has secured the necessary state funding as required under STC 3. The state must inform the Departments of any state budget update or milestone, occurring after the date of this approval letter, within seven days of any such update or milestone. In addition, as outlined in STC 3 and STC 15 the state must demonstrate the state has secured state funding in order to receive federal pass-through

funding. These milestones must include, but are not limited to, whether state funding is included in:

- (a) The strategic priorities and guidelines issued to departments on budget development (e.g., development of the state FY 2023 Budget Report begins by October of 2022) released annually by the Governor and the Budget office;
- (b) The revenue forecast and budget recommendations in the Governor's Budget Report, which is presented to the General Assembly on or before December 20 of the year immediately preceding the session, released annually by the Governor.
- (c) The appropriations bill voted upon by the House and the Senate.
- (d) The appropriations bill passed by the House and the Senate.
- (e) The final enacted appropriations bill (the Appropriations Act). Once the appropriations bill passes, the Governor has thirty (30) days to sign it before it automatically becomes law. The Governor has the constitutional right to veto the entire budget and to strike out portions of the appropriations bill with a line-item veto.
- (f) Other budget information or milestones requested by the Departments.

**12. Post Award Forum.** Per 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), within six (6) 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.<sup>7</sup> 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 thirty (30) days prior to the date of the planned public forum. Per 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), 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 guardrails set forth under section 1332(b)(1)(A) – (D) of the ACA 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 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

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<sup>7</sup> In the event of an emergent situation, the state may seek to use the flexibilities provided at 31 C.F.R. § 33.120(c)(2) and 45 C.F.R. § 155.1320(c)(2), to modify, in part, post award public notice procedures. For example, in an emergent situation that impacts or otherwise limits in-person gatherings, a state could request to host the post award forum virtually while meeting the other applicable requirements.

requested data and information to the Departments or the independent evaluator. The Departments may charge the state for evaluation costs to the federal government.

**15. Pass-through Funding.** Under section 1332(a)(3) of the ACA, pass-through funding is 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 absent the waiver, but that will not be provided under the state's waiver, reduced, if necessary, to ensure deficit neutrality as required by section 1332(b)(1)(D) of the ACA. The state will receive pass-through funding for the purpose of implementing the waiver when the requirements described below are met. Pass-through amounts will not be made available annually until the state has demonstrated that they have secured the necessary funding as outlined in STC 3 for the applicable plan year.

Starting with the 2023 plan year and for each plan year thereafter, by September 15 of the preceding year or once a state has finalized rates for the applicable plan year, whichever is later, the state will provide the following information to the Departments:

- (a) The final second lowest cost silver plan (SLCSP) rates for individual health insurance coverage 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) for the applicable plan year;
- (b) The state's estimate of what the final SLCSP rates for individual health insurance coverage for a representative individual in each rating area or service area (if premiums vary by geographies smaller than rating areas) would have been absent approval of this waiver for the applicable plan year. The state must include with this information the methods and assumptions the state used to estimate the final SLCSP rates and state's estimate of what the final SLCSP rates would have been absent approval of the waiver for each rating area or service area absent approval of this waiver;
- (c) The total amount of all premiums expected to be paid for individual health insurance coverage for the applicable plan year;
- (d) What total premiums for individual health insurance coverage would have been for the applicable plan year without the waiver;
- (e) The amount of APTC paid by month and rating area for the current plan year to date;
- (f) The number of APTC recipients by month and rating area for the current plan year to date;
- (g) The state specific age curve premium variation for the current and upcoming plan year;
- (h) Reports of the estimated total reinsurance reimbursements for the upcoming plan year;

- (i) Reports of the total enrollment estimates for individual health insurance coverage, both with and without the waiver for the upcoming plan year;
- (j) An explanation of why the experience for the upcoming plan 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 SLCSP rates, and the estimated impact on enrollment. The state should also explain changes to the estimated reinsurance estimates relative to prior estimates; and
- (k) Any other information or data requested by the Departments.

The estimated amount of pass-through funding for plan year 2023 through 2027 will be communicated to the state as soon as practicable, conditional on receipt of items (a) through (k) in the paragraph above by the date specified above, and reported to the state on the earliest date practicable. Pass-through amounts are subject to a final administrative determination by the Department of the Treasury prior to payment. The pass-through amount for plan years 2023 through 2027 will be calculated by the Departments annually (per ACA section 1332(a)(3)) and reported to the state on the earliest date practicable, conditional on the state securing funding as outlined in STC 3, on receipt of the budget report information outlined in STC 11, and on receipt of information identified in items (a) through (k) above by the applicable deadline.

The pass-through funds cannot be obligated prior to the effective date for the waiver. The state agrees to use the full amount of pass-through funding for purposes of implementing the state's waiver. Moreover, to the extent pass-through funding exceeds the amount necessary for the state to implement the waiver in a given plan year, the remaining funds must be carried forward and used for purposes of implementing the state's waiver in a subsequent year.

If the waiver is not extended, the Departments will promptly recover unused pass-through funds following the end of the waiver period, December 31, 2027. The state must comply with all necessary steps to facilitate the recovery of such amounts by the Departments within a prompt timeframe.

**16. The Departments' Right to Amend, Suspend, or Terminate.** Consistent with 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 guardrails.

- (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) The Departments will recover unused pass-through funding. The state must comply with all necessary steps to facilitate the recovery of such amounts by the Departments within a prompt timeframe.

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Scott White Insurance Commissioner, Virginia Bureau of Insurance  
On behalf of the Virginia State Corporation Commission  
Commonwealth of Virginia

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



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Chiquita Brooks-LaSure  
Administrator  
Center for Medicare & Medicaid Services

Date: May 18, 2022

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Lily Batchelder Assistant Secretary for Tax Policy  
U.S. Department of the Treasury

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

Sincerely,



Chiquita Brooks-LaSure