



# STATE OF MINNESOTA

## Office of Governor Mark Dayton

130 State Capitol ♦ 75 Rev. Dr. Martin Luther King Jr. Boulevard ♦ Saint Paul, MN 55155

October 16, 2017

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Verma,

I have signed the Specific Terms and Conditions (STCs) for Minnesota's 1332 Waiver, which are attached. However, I strongly disagree with the interpretation of federal law, which is cited in your September 22, 2017 letter as providing the basis for a reduction in funding for Minnesota's Basic Health Plan (BHP).

I previously described in my October 3, 2017 letter how we followed exactly the instructions of your staff last spring to structure our State's new Reinsurance Program, so that it would not adversely affect our BHP funding.

Therefore, Minnesota retains its position on federal BHP funding and reserves all of its rights to that funding. By signing the STCs, Minnesota does not waive those rights.

Sincerely,

A handwritten signature in black ink that reads "Mark Dayton".

Mark Dayton  
Governor

cc: The Honorable David Kautter, U.S. Department of the Treasury

Attachment

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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September 22, 2017

The Honorable Mark Dayton  
State of Minnesota  
Office of the Governor  
130 State Capitol  
75 Rev Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

Dear Governor Dayton:

Thank you for your May 30, 2017 submission of Minnesota's application for a State Innovation Waiver. I am pleased to send this letter from the Centers for Medicare & Medicaid Services (CMS) on behalf of the Department of Health and Human Services (HHS) and the Department of the Treasury (collectively, the Departments).

This letter is to inform you that the Departments, having completed their review of the application, approves in part Minnesota's State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (PPACA) as described below and conditioned upon the state's written acceptance within 30 days of the specific terms and conditions (STCs) that are enclosed with this letter. This approval is effective for a waiver period of January 1, 2018, through December 31, 2022.

Minnesota's application sought waiver of the PPACA requirement for the single risk pool in order to implement the Minnesota Premium Security Plan (MPSP). The Departments are granting Minnesota's application to waive the single risk pool requirement in the individual market under section 1312(c)(1) of the PPACA, 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.

The Departments have determined that implementation of this reinsurance program will lower individual market premiums in the state and the premium tax credits (PTC) to which Minnesota residents would have been entitled absent the waiver. These PTC savings will be passed through to the state to be used for implementation of the waiver plan.

The Departments do not approve Minnesota's request to receive funding equal to the amount of the forgone federal funds and assistance that would have been provided without the waiver. Under section 1332(a)(3), pass-through may only include savings based on PTC, cost sharing reductions or small business credits for which individuals and businesses in Minnesota would have qualified without the waiver. Minnesota residents who are eligible to enroll in Minnesota's

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Basic Health Program (BHP), with or without a 1332 waiver in place, are not eligible to participate in the Exchange, and thus are not eligible to receive PTC. See PPACA § 1331(e)(2) (“An eligible individual shall not be treated as a qualified individual under section 1312 eligible for enrollment in a qualified health plan offered through an Exchange . . .”). Accordingly, any savings related to BHP-eligible persons cannot be considered when determining Minnesota’s 1332 pass through amounts. Thus, while implementation of the state plan will likely have the effect of lowering federal spending on Minnesota’s BHP, that reduction will not be considered in determining payments to the state under section 1332.

The enclosed STCs further define the state’s responsibilities with respect to implementation of the waiver and use of pass-through funding during the waiver period and the nature, character, and extent of anticipated federal oversight of the project. A breach of any of the STCs may lead to termination of Minnesota’s State Innovation Waiver.

Please send your written acceptance and any communications and questions regarding program matters or official correspondence concerning the waiver to Michelle Koltov at [Michelle.Koltov@cms.hhs.gov](mailto:Michelle.Koltov@cms.hhs.gov) or [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

Congratulations, and we look forward to working with you and your staff. Please do not hesitate to contact us if you have any questions.

Sincerely,

Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services

Enclosure

Cc: David Kautter, Assistant Secretary for Tax Policy, U.S. Department of the Treasury

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 Minnesota — Patient Protection and Affordable Care Act Section 1332 Waiver  
Approval

AWARDEE: The State of Minnesota

I. PREFACE

The following are the specific terms and conditions (STCs) for the State of Minnesota’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 and 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 during the term of the waiver, which is January 1, 2018, through December 31, 2022. Accordingly, these STCs are effective beginning January 1, 2018, and will terminate on December 31, 2022, unless the waiver is extended as provided by these STCs. The state’s application to waive certain provisions of the PPACA – dated May 30, 2017 is specifically incorporated by reference into these STCs, except with regard to any proposal inconsistent with the Departments’ approval of the waiver or these STCs.

**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 the Reinsurance Program.** The Minnesota Premium Security Plan (MPSP) is a state-operated reinsurance program which aims to reduce premiums for all Minnesotans in the individual market. The MPSP is administered by the State of Minnesota and the Minnesota Comprehensive Health Association (MCHA). Minnesota law contemplates MPSP as a two-year program and the state must notify the Departments if the term of the program is amended. The state must inform the Departments of change in Minnesota state law or regulations that would impact the waiver, including any change to the requirements under the MPSP authorizing or appropriations legislation, such as the amount of funding appropriated to the MPSP. The state must report any changes in state law occurring after the date of this approval letter within 30 days of any such changes.

In addition, the state must report any changes to the MPSP such as changes to the approved payment parameters for the MPSP reimbursement or changes to eligibility criteria for enrollees’ claims to be reimbursed under the MPSP. Consistent with the waiver application, the State of Minnesota and the MCHA are responsible for any reconciliation of reinsurance payments that

Minnesota wishes to make to account for any duplicative reimbursement through the HHS-operated risk adjustment program for the same high cost claims.

**3. Legislation Authorizing and Appropriating Funds to the MPSP.** The state must disburse sufficient funds, on an annual or other appropriate basis, for the MPSP 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 and section 1557 of the PPACA.

**5. Compliance with Applicable Federal Laws.** Per 31 CFR 33.120(a) and 45 CFR 155.1320(a), the state must comply with all applicable federal laws and regulations, unless a law or regulation has been specifically waived. A 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. The state will 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, STCs and 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 as soon as reasonably possible and at least 30 days in advance of the expected implementation date of the amended STCs to allow the state to discuss the changes necessary to ensure compliance with law, regulation, and policy, 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.

**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 proposal and these STCs. In addition, the Departments will promptly share with the state any complaint that they have received and 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 suspend or request withdrawal of 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 or terminate the waiver, or to withdraw a portion 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

comment summary 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 transition and phase-out plan for a 30-day public comment period and conduct tribal consultation. 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 transition and phase-out plan to address the comment.

b) The state must obtain the Departments' approval of the transition and phase-out plan prior to the implementation of the phase-out activities. Implementation of phase-out activities must be no sooner than 14 days after the Departments' approval of the phase-out plan.

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

**9. Waiver Extension Request.** The state must inform the Departments as to whether the state will apply for continuation of the waiver one year prior to the waiver's end date. The Departments and the state will engage in further discussions to develop guidelines and define next steps for phase-out or continuation of the waiver. If the state does not apply for an extension of the waiver, CMS will provide guidance on the wind-down of the state's waiver.

**10. Reporting:** The state will submit annual reports as specified in 31 CFR 33.124 and 45 CFR 155.1324. Each such report must include:

- The progress of the section 1332 waiver;
- Data sufficient to show compliance with section 1332(b)(1)(A) through (D) of the PPACA;
- A summary of the annual post-award public forum, held in accordance with 31 CFR 33.120(c) and 45 CFR 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.
- Other information consistent with the state's approved terms and conditions.

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 comments received. The state must publish the final annual report on the state's public web site within 30 days of approval by the Departments.

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.
  - d. The actual amount of APTC paid, by rating area for the plan year.
  - e. The actual number of APTC recipients for the plan year. The number should be the number summed over all 12 months and divided by 12 to provide an annualized measure.
- 2) Changes to the MPSP or other program changes as specified in STC 2.
- 3) Notification of changes to state law that may impact the waiver as specified in STC 2.
- 4) Reporting of:
  - a. Federal pass-through funding spent on reinsurance individual claim payments to issuers from the MPSP and/or operation of the reinsurance program. Note: the state will ensure that issuers eligible for reinsurance payments for the applicable benefit year are notified of their eligibility no later than June 30 of the year following the applicable benefit year. The state will inform the Departments of the MCHA payment schedule by January 1, 2018. By August 15 of the year following the applicable benefit year, MCHA must disburse all applicable reinsurance payments to an eligible health carrier.
  - b. The unspent balance of federal pass-through funding for the reporting year, if applicable.
- 5) The amount of state funding appropriated to fully fund the MPSP for the reporting year.
- 6) The state must also report on any incentives for providers, enrollees, and plan issuers to continue managing health care cost and utilization 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 pooling mechanism. The report must include the 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 pool, the risk adjustment amount paid by HHS for those claims, and the reinsurance reconciliation amount applied.

*Quarterly Reports:* Under 31 CFR 33.120(b) and 45 CFR 155.1320(b), 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 MPSP, including the plan for processing claims, by February 28, 2018. Thereafter, the state must report on the operation of the waiver quarterly, no later than 60 days following the end of each calendar quarter. The state should provide the actual amount of APTC paid for 2017, by rating area for the plan year; and the actual number of APTC recipients for the 2017, in the earliest quarterly report for which these data are available. The number of APTC recipients should be the number summed over all 12 months and divided by 12 to provide an annualized measure.

**11. Post Award Forum.** Per 31 CFR 33.120(c) and 45 CFR 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 must also include a summary of this forum as part of the quarterly reporting requirements under 31 CFR 33.124 and 45 CFR 155.1324 as specified in STC 10.

**12. Monitoring Calls.** The state must participate in monitoring calls with the Departments that are deemed necessary by the Departments. The purpose of these 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.

**13. 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 CFR 33.120(f) and 45 CFR 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 or have it taken into account in the pass-through funding calculation.

**14. 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 Minnesota absent the waiver, but that will not be provided under the waiver, while considering all changes in federal revenue. The Departments have evaluated the estimates in the application for a pass-through

amount for the period of the waiver. The state will receive pass-through funding for the purpose of implementing the state plan under the waiver. The amount of pass-through funding due under the statute for the 2018 calendar year is estimated to be \$139.2 million. The amount for the 2018 to 2022 waiver period is estimated to be \$1,002.8 million. These estimates are preliminary and subject to revision as described in the rest of this section below. Pass-through amounts will be made available in advance of MPSP payments to the insurer(s) and no later than April of the applicable calendar year. Please see Appendix A for information on the estimated pass-through calculation.

Starting with the 2018 benefit year, the state will provide: (1) the final SLCSP rates for a representative individual (e.g. a 21 year old non-smoker) in each rating area and (2) 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. The state will provide this information for plan year 2018 no later than three (3) business days after Minnesota executes these STCs, and for later years, no later than September 15 of the preceding year. The state will include with this information the methods and assumptions the state used to estimate the final SLCSP rates for each rating area absent approval of this waiver.

The state also will provide: (3) the total amount of all premiums expected to be paid in the non-group market for the plan year and (4) what total premiums would have been for the plan year without the waiver. Lastly, the state will provide (5) the amount of APTC paid by month and rating area for the current year to date and (6) the number of APTC recipients by month and rating area for the current year to date. The state will provide this information for plan year 2018 no later than three (3) business days after Minnesota executes these STCs, and for later years, no later than September 15 of the preceding year.

The amount of pass-through funding for plan year 2018 will be communicated to the state no later than 45 days after the receipt of items 1 through 6 in STC 14 above, which Minnesota will provide no later than three (3) business days after executing these STCs, and subject to a final administrative determination by the Department of Treasury prior to payment. The pass-through amount for plan years 2019 through 2022 will be calculated by the Departments annually (per PPACA section 1332(a)(3)) and reported to the state not later than October 31 of the preceding year, conditional on receipt of the SLCSP premium and total premium information (items 1 through 4 above) by September 15.

The pass-through funds cannot be obligated by the state 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 MPSP for 2018 and future years. Moreover, to the extent pass-through funding exceeds the amount necessary for the reinsurance program to cover payments for individual claim payments to issuers under the MPSP 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, 2022. The state will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

**15. The Departments' Right to Amend, Withdraw, Terminate or Suspend.** Under 31 CFR 33.120(d) and 45 CFR 155.1320(d), the Departments reserve the right to amend, withdraw, terminate, or suspend 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 suspension or termination, together with the effective date.

b) In the event that all or a portion of the waiver is terminated or suspended by the Departments or if all or a portion of the waiver is withdrawn, federal funding available after the effective date of the termination, suspension, or withdrawal will be limited to normal closeout costs associated with an orderly termination, suspension or withdrawal, including service costs during any approved transition period and administrative costs of transitioning participants, as described in 31 CFR 33.120(e) and 45 CFR 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.

*Mark Dayton*

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The Honorable Mark Dayton  
Governor  
State of Minnesota

Date: *October 16, 2017*

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

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

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

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

## Appendix A: Pass-Through Calculation Estimates for Minnesota 1332 Waiver Application

The estimated amount of PTC savings to be passed through to the state is shown below. These estimates are preliminary and subject to revision after receipt of periodic reports outlined in condition 10 and data from the state as outlined in condition 14 above.

<b>2018</b>	139,247,994
<b>2019</b>	183,930,230
<b>2020</b>	199,547,508
<b>2021</b>	226,011,092
<b>2022</b>	254,101,000
<b>Total</b>	1,002,837,824