



Colorado 1332 Waiver Application DRAFT

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*Submitted by the Colorado Division of Insurance
part of the Department of Regulatory Agencies (DORA)*

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Executive Overview

Waiver Request

The State of Colorado, through its Division of Insurance (DOI or Division), submits this 1332 State Innovation Waiver request to the Center for Medicare and Medicaid Services (CMS), a division of the United States Department of Health and Human Services (HHS), and the Department of the Treasury. This request seeks waiver of Section 1312(c)(1) under Section 1332 of the Affordable Care Act (ACA) for a period of five years beginning in the 2020 plan year, to develop a state reinsurance program. This waiver will not affect any other provision of the ACA but will result in a lower market-wide index rate, thereby lowering premiums and reducing the federal cost of the premium tax credit (PTC) and advance payments of the PTC (APTC).

Basis for Request and Goal of Reinsurance Program

While Colorado has made great strides in improving access to health insurance coverage in recent years in its individual health insurance market, premiums have continued to increase. Increases have been particularly acute in the rural areas of the state - the mountain communities, the Western Slope, the southern counties and the Eastern Plains. Certain health care costs, such as the prices charged by doctors and hospitals - are much higher in these areas for a variety of reasons - such as natural monopolies and limited availability - which in turn drives up premiums. In the last few years, Colorado's individual health insurance market has seen substantial rate instability. The average premium increase for 2017 was 20 percent, and in 2018 it was 32 percent. While the 2019 average increase was a comparatively small 5.6 percent, all of these increases are cumulative.

The creation of a state reinsurance program through a 1332 waiver will bring certainty and stability to Colorado's individual health insurance market through state-based innovation. By reimbursing insurers for high-cost claims, the reinsurance program will spread risk across the broader Colorado health insurance market, thereby lowering premiums and increasing access to affordable private coverage. This is especially important for the rural areas of the state that have seen the highest premium increases in the state. The program will increase access to health insurance, particularly in those areas, by making insurance more affordable.

The program is also expected to encourage current carriers to maintain their participation in the state's nine geographic areas, and create favorable conditions for expanding their coverage into new areas. It may also incent new carriers to enter Colorado's individual market due to the stabilization of premiums through reinsurance.

Operation, Funding, and Impact of the Colorado Reinsurance Program

House Bill 19-1168 (HB19-1168), signed into law on *[insert date]*, establishes a reinsurance program to be administered by the Colorado DOI. Total funding for the reinsurance program for

2020 is estimated to be approximately \$236.2 million dollars. The program will be partially funded through a special assessment fee on hospitals. Through this waiver request, Colorado seeks federal pass-through funds to fund the remainder of reinsurance program. HB19-1168 makes the operation of the reinsurance program contingent on the approval of this waiver request. Both the assessment fee and the pass-through funds will be used for the reinsurance payments themselves, as well as the administration of the program.

The reinsurance program will reimburse qualifying individual health insurers for a percentage of an enrollee's claims between an attachment point and a cap. In 2020, the program will reimburse approximately 75 percent of claims between the attachment point and an estimated \$500,000 cap. The program will reimburse at different percentages due to language in the HB19-1168 that specifies a three-tier structure for reducing the costs of claims. The three-tier structure is designed to provide greater relief in areas of the state with higher health care costs and health insurance premiums - our rural and mountain areas - as compared to areas with somewhat lower costs and premiums - the metropolitan areas and those areas along the Front Range (corresponding to the cities along Interstate 25). The DOI will set these program parameters through administrative rule. The Division estimates that the reinsurance program, as part of the waiver proposal, will result in a net premium decrease of 22.8 percent on average across the entire state in 2020.

In order to promote more cost-effective health care coverage and to be prudent with federal taxpayer funds by restraining growth in federal spending commitments, HB19-1168 stipulates that Colorado's Insurance Commissioner shall require each health insurance carrier eligible for the reinsurance program to file the care management protocols the carrier will use to manage claims with the payment parameters. The Commissioner shall establish by rule the deadlines for filing this information, along with the form and manner of filing.

Compliance with Section 1332

Colorado's waiver, if approved, will reduce premiums and increase affordability of health insurance in Colorado's individual health insurance market. Actuarial analysis estimates that, as a result, enrollment in the individual market will increase by approximately 6.6 percent in 2020 (see Table 1 below). The waiver will not impact the comprehensiveness of coverage in Colorado, except insofar as individuals with coverage will have more comprehensive coverage than those without. The waiver will have no material impact on premiums, comprehensiveness, or enrollment in group coverage or public programs. The reduction in individual health insurance premiums, including premiums for the second-lowest-cost silver plan, will reduce net federal spending by about **[TBD]** in each of five years the waiver is in place. The state requests federal pass-through funding equal for each year in the amount of the federal savings. Accordingly, the waiver will not increase the federal deficit in any year of the waiver. In addition, the waiver will advance several of the principles described in the section 1332 guidance released in October

2018, including expanding access to private coverage and supporting and empowering those in need.

Table 1. Potential Impact of the Colorado Reinsurance Program on 2020 Premiums, Enrollments and Federal Deficit

	Premium Impact	Impact on Individual Market Enrollment	Federal Savings
Effects of Reinsurance Program	-22.8%	+6.6%	\$117.5 million

I. Colorado’s 1332 Waiver Request

Colorado’s individual health insurance market, like others across the country, has been through significant changes and challenges in the past few years.

Since the enactment of the Affordable Care Act (ACA), Colorado has made significant improvements in access to health care coverage, with the uninsured rate decreasing from 15.8% in 2011 to 6.5% in 2017. The state was able to retain all seven of its Exchange carriers for 2018 and 2019, in large part due to the state’s efforts to work collaboratively with Colorado health insurance carriers. Yet, despite this stability in the market, premiums have continued to increase. The statewide average premium increase for 2017 was 20 percent, and in 2018 it was 32 percent. In 2019, the statewide average increase was a comparatively small 5.6 percent.

The rural areas of Colorado - the mountain communities, the Western Slope, the southern counties and the Eastern Plains - have been hit especially hard, absorbing premium increases much higher than the statewide averages. Health care costs - what doctors and hospitals charge - can be much higher in these areas, and these costs push premiums higher.

To attack this problem, Colorado seeks a waiver of Section 1312(c)(1) under Section 1332 of the ACA, for a five-year period beginning in the 2020 plan year, to develop a state reinsurance program. The waiver is intended to further stabilize the individual market, reduce rates, and to encourage insurance companies to offer plans in more parts of the state.

Section 1312(c)(1) requires “all enrollees in all health plans . . . offered by [an] issuer in the individual market . . . to be members of a single risk pool.” This application calls for waiving the single risk pool requirement to the extent it would otherwise require excluding expected state reinsurance payments when establishing the market-wide index rate. A lower index rate will result in lower premiums for Colorado’s second lowest-cost silver plan, resulting in a reduction

in the overall APTC that the federal government is obligated to pay for subsidy-eligible consumers in Colorado. The waiver does not require changes to any other ACA provision.

As premium increases cause healthier individuals to drop coverage, the pool of people becomes sicker, older and higher risk, and therefore, more costly to insure. Healthy lives are needed to balance risk so that consumers have access to affordable coverage. Without a reinsurance program, individual health insurance premium in Colorado will continue to rise at an unsustainable rate, and more healthy lives will be left out of the pool as more residents will choose or be forced to go without health insurance, further driving up rates due to adverse selection and provider cost shifting. Operating a state-based reinsurance program will help reduce the potential for further market disruption, and is a positive step towards stabilization. The reinsurance program will lower the cost of individual premiums and is a means for insurers to manage high cost claims in a way that prevents them from leaving the market, all while decreasing federal subsidy obligations.

By mitigating high-cost individual health insurance claims, the reinsurance program will help stabilize Colorado's individual market and make premiums more affordable. Table 1 above shows that, with the waiver and reinsurance program in place, individual market premiums, including premiums for the second lowest cost silver plan, are expected to be 22.8 percent lower in 2020 than they would be absent the waiver.

This premium reduction will reduce federal APTC and PTC cost. The actuarial analysis shows that absent the waiver, 2020 federal APTC and PTC spending in Colorado will be an estimated \$546,000,000. After factoring in the waiver, total 2020 federal APTC and PTC spending is estimated to be \$428,500,000 – a savings of \$117,500,000. Similar savings are estimated for each year of the 10-year budget window.

To partially fund the reinsurance program itself, as well as its operational costs, Colorado seeks federal pass-through funds in the amount the federal savings for APTC and PTC, subject to the cap imposed by the statutory deficit neutrality requirement. In addition to Federal pass-through funds, the remaining funding of the program will come from an assessment of special fees from Colorado hospitals.

II. Compliance with Section 1332 Guardrails

Table 2 - High-Level Guardrails Results

Guardrail	Effect of Waiver
Coverage	Increase in enrollment
Affordability (2020)	Statewide avg. premium decrease of 22.8%
Comprehensiveness	No change to EHBs
Deficit Neutrality (2020)	Federal savings of \$117.5 million
Deficit Neutrality (10-year)	Federal savings each year of 10-year window

A. Scope of Coverage Requirement (1332(b)(1)(C)):

As previously noted, the waiver will reduce the cost of coverage in the individual market. As a result and as indicated in Table 1, enrollment in the individual market is expected to increase by approximately 6.6 percent in 2020, with similar increases in later years. The waiver will have no material impact on the availability of other types of coverage, such as Health First Colorado (Colorado's Medicaid program), Children's Health Insurance Program (CHIP), and employer-based insurance, so no impact is expected on the number of individuals with those types of coverage. By lowering premiums, the waiver will have a positive impact on vulnerable populations in Colorado who buy coverage.

B. Affordability Requirement (1332(b)(1)(B)):

As noted above, the reinsurance program will, in each year it is in effect, make the cost of individual coverage lower than it would be absent the waiver. The waiver will not affect the premiums or cost-sharing for coverage obtained through other means, such as Medicaid, CHIP, and employer-based coverage. The waiver will have a positive impact on vulnerable populations who buy coverage in the individual market since premiums will be lower.

C. Comprehensiveness Requirement (1332(b)(1)(A)):

The waiver will have no material effect on the comprehensiveness of coverage for Colorado residents. Regardless of whether the waiver is granted, all Colorado ACA-compliant plans will be required to provide coverage of essential health benefits. Similarly, the scope of benefits provided by other types of coverage such as Medicaid, CHIP, and grandfathered plans will not be impacted. The waiver is expected to increase the number of individuals with health coverage. Individuals gaining health coverage under the waiver will have coverage for more comprehensive health benefits than they would absent the waiver.

D. Deficit Neutrality Requirement (1332(b)(1)(D)):

As stated above, Colorado anticipates that individual premiums, including premiums for the second-lowest-cost silver plan, will be lower under the waiver by 22.8 percent in 2020. Because federal APTC and PTC costs are tied to the second-lowest-cost silver plan, these lower premiums will result in lower federal spending net of revenues in each year of the waiver. Combining these factors, the waiver will produce net federal savings of about \$117.5 million in 2020 and similar amounts in later years. Colorado requests pass-through funds in each year equal to the expected APTC/PTC savings, and not to exceed net expected savings under the waiver. As shown for selected time periods in the actuarial and economic analysis for each year, granting pass-through funding in these amounts will not result in the waiver increasing the federal deficit in any year, over the 5 years of the waiver, or over a 10-year budget window.

Table 3 - Impact to Federal Deficit Savings/Costs, Selected Time Periods

Category of Impact	2020	2020 - 2024	2020 - 2029
Savings in APTC / PTC	\$117.5 million	<i>TBD</i>	<i>TBD</i>
Impact on PCORI Fee Revenues	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>
Requested Pass-Through Funds	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>
Total Impact on Federal Deficit	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>

III. Description of the Colorado 1332 Waiver Proposal

A. Authorizing Legislation

HB19-1168,[1] which establishes the reinsurance program and gives the Colorado Division of Insurance (DOI or Division) the authority to implement a 1332 waiver, was signed into law by Governor Jared Polis on *[insert date]*. The goal of HB19-1168 is to stabilize premiums for health insurance in the individual market and provide greater financial certainty for consumers.

HB19-1168 requires the DOI to establish, via regulation, the reinsurance program requirements and parameters, including the reinsurance program attachment point, coinsurance rate, reinsurance cap, and payment processes. The bill also gives the Division the authority to apply for a federal waiver to carry out the reinsurance program.

The reinsurance program will reimburse individual health insurers for a proportion (the coinsurance amount) of high-cost enrollee claims between a lower bound (the attachment point)

and an upper bound (cap). The payment parameters for the 2020 plan year, consisting of the coinsurance amount, the attachment point, and the cap, shall be established by the Insurance Commissioner, via rule, no later than October 1, 2019. These payment parameters can be adjusted from year-to-year based upon the claims experience, the funds available, and the anticipated claims for the coming plan year. The annual payment parameters for subsequent plan years will be established by the Commissioner, by rule, no later than March 15 of the immediately preceding year.

For 2020, Colorado is likely to set the attachment point at \$50,000, and the reinsurance cap at \$500,000, with variable coinsurance rates at that correspond to the three tiers of reducing claims costs, as stipulated in the enabling legislation. The program, as stipulated in HB19-1168, will have three tiers based on the state's geographic rating areas. For Tier 1, the bill specifies that the program bring down claims costs by 15 percent - 20 percent for Geographic Rating Areas 1 (Boulder), 2 (Colorado Springs) and 3 (Denver); for Tier 2, it is to bring claims costs down by 20 percent - 25 percent for Areas 4 (Fort Collins), 6 (Greeley), 7 (Pueblo) and 8 (Eastern Plains and central southern part of Colorado); and for Tier 3, by 30 percent - 35 percent for Areas 5 (Grand Junction) and 9 (Mountain Areas, Western Slope and western half of Colorado). Areas 5 and 9 are targeted for the highest claims reductions costs as they typically have the highest health care costs in Colorado and thus the highest insurance premiums.

These tiered savings will be achieved by varying the coinsurance amounts for the three tiers. The reinsurance program will pay for claims when an individual's aggregate claims costs in a plan year reach the attachment point of \$50,000, at the coinsurance percentage, up to the designated program cap of \$500,000. For example, tier 1 areas will have a coinsurance rate of 75 percent, meaning that once a person's total claims costs reach \$50,000 for a plan year, the reinsurance program will pay 75 percent of the claims costs (while the health insurance carrier pays the other 25 percent), up to the cap of \$500,000, at which point the carrier will again take over the payment of claims.

In subsequent years, the enabling legislation allows the DOI to adjust the payment parameters based on the previous year's experience.

In addition to the federal pass-through, the remaining funding for the program will come from the assessment of special fees from Colorado hospitals. The enabling legislation requires Colorado's Insurance Commissioner to calculate these fees based on the amount necessary to reduce health insurance carriers' claims costs by the amounts stipulated for each tier, but ensuring that the total amount of fees collected does not exceed \$150,000,000 for the 2020 plan year. For the 2021 plan year and each year thereafter of the program, the Commissioner shall determine the amount of the special fees assessed against the hospitals, based on the claims submitted under the reinsurance program and administrative and operating expenses of the

program in the year immediately preceding plan year, the expected annual growth in the program, the other payment parameters established by rule, and other actuarial considerations. But the special fees are not to exceed \$150,000,000 for a plan year, and the total amount of fees assessed against the hospitals over the five years of the reinsurance program shall not exceed \$500,000,000.

The funding from hospitals may be offset by specific fees described in the legislation from Colorado health insurance carriers. The enabling legislation says that for the 2020 plan year and beyond, after carriers have filed and the Insurance Commissioner has approved rates for the year, should the Federal government suspend the fee imposed pursuant to section 9010 of the Federal act for that plan year but the insurance carriers collect the fee, the Commissioner shall assess a special fee from the carriers of 2.2 percent of premiums collected (unless the Federal government changes the amount of the fee specified in section 9010). The Commissioner is to use those collected fees in order to reduce the amount of fees collected from Colorado hospitals, up to \$30,000,000 per year.

B. Federal Pass-Through Funding

The waiver is designed to improve Colorado residents' access to affordable and comprehensive coverage. The goals of the reinsurance program are to spread the risk of high-cost claimants across the broader health insurance market, thereby lowering premiums for the individual market. In doing so, the reinsurance program will incentivize individual enrollees to join or remain in the market, encourage insurer participation, and reduce overall instability.

Because the amount of APTC available for eligible consumers is tied to the second-lowest-cost silver plan available through Colorado's Marketplace, known as Connect for Health Colorado, the waiver will reduce net federal expenditures due to APTC and PTC. Through this waiver request, Colorado seeks the amount of these federal savings, net of other costs that result from the waiver. Colorado will use these funds to partially fund both the reinsurance program itself and the operational costs of the program.

IV. Draft Waiver Implementation Timeline

The Colorado DOI will be responsible for implementing the reinsurance program, and will promulgate rules establishing the program's operating processes, requirements, payment parameters, and procedures. The Division will oversee the collection of payments made through the hospital assessment fee, review the claims submitted to the reinsurance program for payment, and distribute reinsurance payments to eligible insurers. Colorado already has a number of initiatives designed to incentivize providers, payers, and enrollees to contain and manage health care costs and utilization for high-claims-cost individuals. In addition, the enabling legislation

calls on carriers eligible for the reinsurance program to file the care management protocols the carrier will use to manage claims within the reinsurance program with the DOI.

Implementation Timeline

- 04/15/2019: The Colorado DOI releases draft Section 1332 Waiver application for public comment
- 04/22/2019: First public hearing on draft Section 1332 Waiver application is held in Loveland, Colorado
- 04/25/2019: Tribal consultation meeting on draft Section 1332 Waiver application is held in Durango, Colorado
- 04/29/2019: Second public hearing on draft Section 1332 Waiver application is held in Denver, Colorado
- 05/15/2019: Public comment period on draft Section 1332 Waiver application ends
- 05/17/2019: Colorado Reinsurance Bill HB 19-1168 becomes effective upon signature of the Governor
- 05/22/2019: The Colorado DOI submits Section 1332 Waiver application to the federal government
- 06/14/2019: Carriers file two sets of initial rates with the Colorado DOI for the 2020 plan year - one set to be used if the waiver application is approved, one set if the waiver application is not approved
- 06/22/2019: The federal government determines that the waiver application is complete
- 08/14/2019: Both sets of filed rates are approved by the Colorado DOI for the 2020 plan year
- 09/01/2019: The Colorado DOI holds rulemaking hearing for proposed rules for the reinsurance program, including the payment parameters, for the 2020 plan year
- 10/01/2019: The federal government grants Section 1332 Waiver starting with the 2020 plan year
- 10/01/2019: Colorado DOI informs state exchange and carriers that rates reflecting an approved waiver application will be used for the 2020 plan year
- 10/01/2019: Payment parameters for the 2020 plan year will be adopted by the Insurance Commissioner to be effective 01/01/2020
- 11/01/2019: Colorado DOI staffs the reinsurance program
- 11/01/2019: Annual open enrollment period begins for the 2020 plan year
- 01/01/2020: Colorado DOI rules for the reinsurance program and the payment parameters for the 2020 plan year become effective
- 01/01/2020: Reinsurance program begins
- 02/28/2020: First quarterly report on the 2020 operation of the reinsurance program due to Centers for Medicare and Medicaid Services (CMS)
- 03/15/2020: Payment parameters for the 2021 plan year will be established by rule

05/01/2020: Hospitals pay assessment for first quarter 2020 based upon the payment parameters established for the 2020 plan year

06/01/2020: Colorado DOI holds six-month public forum required by 45 CFR 155.1320(c)

06/14/2020: Carriers file initial rates with the Colorado DOI for the 2021 plan year

07/01/2020: Colorado DOI submits second quarterly 2020 report on the reinsurance program to CMS

08/01/2020: Hospitals pay second quarterly assessment based upon the payment parameters established for the 2020 plan year

08/14/2020: Rates approved by the Colorado DOI for the 2021 plan year

10/01/2020: Colorado DOI submits third quarterly 2020 report on the reinsurance program to CMS

11/01/2020: Hospitals pay third quarterly assessment based upon the payment parameters established for the 2020 plan year

11/01/2020: Annual open enrollment period begins for the 2021 plan year

12/01/2020: Colorado DOI holds six-month public forum required by 45 CFR 155.1320(c)

02/01/2021: Hospitals pay fourth quarter assessment based upon the payment parameters established for the 2020 plan year

03/15/2021: Payment parameters for the 2022 plan year will be established by rule

04/01/2021: Colorado DOI submits first draft annual report to the Federal government pursuant to 45 CFR 155.1324(c)

04/01/2021: The federal government funds the reinsurance program for the 2020 plan year

05/01/2021: Colorado DOI submits its first quarterly 2021 report to the federal government

05/01/2021: Hospitals pay first quarter 2021 assessment based upon the payment parameters established for the 2021 plan year

06/01/2021: Insurers submit 2020 claims to the reinsurance program

06/01/2021: Colorado DOI holds six-month public forum required by 45 CFR 155.1320(c)

06/15/2021: Carriers file rates with the CO DOI based upon payment parameters established for the 2022 plan year by rule

06/21/2021: Colorado DOI holds annual public forum required by 45 CFR 155.1320(c).

07/01/2021: Colorado DOI submits its second quarterly 2021 report to the federal government.

08/01/2021: Hospitals pay second quarterly 2021 assessment based upon the payment parameters established for the 2021 plan year

11/01/2021: Hospitals pay third quarterly assessment assessment based upon the payment parameters established for the 2021 plan year

10/01/2021: Colorado DOI submits its third quarterly report to the federal government

12/01/2021: Colorado DOI holds six-month public forum required by 45 CFR 155.1320(c)

12/31/2021: The reinsurance program completes reimbursement insurers for 2020 eligible claims

V. Additional Information and Reporting

A. Administrative Burden

Waiver of Section 1312(c) will cause minimal administrative burden and expense for Colorado and for the federal government. The waiver will cause no additional administrative burden to employers and individual consumers because Section 1312(c) does not relate to the administrative functions or requirements typically undertaken by employers or individuals. Individual health insurers will experience some administrative burden and associated expense as a result of the reinsurance program; however, the benefit to insurers from the program will far exceed any resulting administrative expense.

Colorado has the resources and staff necessary to absorb the following administrative tasks that the waiver will require the state to perform:

- Administer the reinsurance program
- Distribute federal pass-through funds
- Monitor compliance with federal law
- Collect and analyze data related to the waiver
- Perform reviews of the implementation of the waiver
- Hold annual public forums to solicit comments on the progress of the waiver
- Submit annual reports (and quarterly reports if ultimately required) to the federal government

The waiver will require the federal government to perform the following administrative tasks:

- Review documented complaints, if any, related to the waiver.
- Review state reports.
- Periodically evaluate Colorado's 1332 waiver program.
- Calculate and facilitate the transfer of pass-through funds to the state.

Colorado believes that the above administrative tasks are similar to other administrative functions currently performed by the federal government, so that their impact is minimal. Waiver of Section 1312(c)(1) does not necessitate any changes to the Federally-Facilitated Marketplace or to IRS operations and will not impact how APTC and PTC payments are calculated or paid.

B. Impact on Residents Who Need to Obtain Health Care Services Out-of-State

Because Colorado shares borders with Arizona, Kansas, Oklahoma, Nebraska, New Mexico, Utah and Wyoming, insurer service areas and networks that cover border counties generally contain providers in those states, especially in areas where the closest large hospital system is

located in the border state. Granting this waiver request will not impact insurer networks or service areas that provide coverage for services performed by out-of-state providers.

C. Ensuring Compliance, Waste, Fraud and Abuse

The Colorado DOI is responsible for regulating and ensuring regulatory compliance and monitoring the solvency of all issuers; performing market conduct analysis, examinations, and investigations; and providing consumer outreach and protection. The DOI investigates all complaints that fall within the agency's regulatory authority.

The State of Colorado and the DOI currently prepare comprehensive financial accounting statements annually as part of the Colorado Department of Regulatory Agencies (DORA), which is the department under which the Colorado DOI is located. Financial statements of DORA, which includes those of the DOI, are audited annually, with the most recent audit completed for the fiscal year ending in 2017. The Colorado DOI will administer the reinsurance program in accordance with its existing accounting, auditing, and reporting procedures. Auditing and reporting obligations of participating insurers will be established by rule.

The Colorado Department of Regulatory Agencies, under which the DOI is housed, is audited periodically by the Colorado Office of the State Auditor. The reinsurance program will also be subject to audit by the Colorado Office of the State Auditor. The federal government is responsible for calculating the savings resulting from this waiver and for ensuring that this waiver does not increase federal spending.

D. State Reporting Requirements and Targets

The Colorado DOI will submit quarterly and annual reports as specified in 45 CFR § 155.1324. Each quarterly report will include the following:

- (1) The progress of the section 1332 waiver;
- (2) Data, similar to that contained in Attachment 1, necessary to demonstrate compliance with Section 1332(b)(1)(B) through (D) of the PPACA;
- (3) A summary of the annual post-award public form, held in accordance with 45 CFR § 155.1320 (c), including all public comments received at the forum regarding the progress of the Colorado 1332 waiver, and any actions taken in response to comments received;
- (4) Other information the Colorado DOI determines necessary to evaluate the waiver and accurately calculate the pass-through payments to be made by CMS; and
- (5) Reports of ongoing operational challenges, if any, and plans for, and results of, corrective actions that have been taken.

The Colorado DOI will submit a draft annual report within ninety (90) days after the end of the first waiver year, and each subsequent year that the waiver is in effect. The DOI will publish the draft annual report on the Division's website within thirty (30) days of submission of the draft report to CMS. Within sixty (60) days of receipt of comments from CMS on the draft annual report, the DOI will submit the final annual report for the waiver year. That submission will include a summary of the comments received, as well as a copy of the comments submitted to the Division on the draft annual report. Once the final annual report is approved by CMS, the DOI will publish the final annual report on its website within thirty (30) days of that approval.

The annual report prepared by the Colorado DOI will include the following:

- (1) Metrics to assist evaluation of the waiver's compliance with the requirements found in section 1332(b)(I):
 - 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 reinsurance program, including the funding level the program will be operating at for the next plan year, or other program changes
- (3) Notification of changes to state law that may impact the waiver
- (4) Reporting of:
 - a. Federal pass-through funding spent on reinsurance claim payments to issuers from the 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 issuer assessments available to the Colorado DOI to fully fund the reinsurance program for the reporting year.
- (6) A description of any incentives for providers, enrollees, and plan issuers to continue managing health care costs 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 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 risk

adjustment amount paid by HHS for those claims, and the reinsurance true-up amount applied.

Payment Schedule - The Colorado DOI will inform the CMS/HHS of the reinsurance program payment schedule by January 1, 2020.

Quarterly and other Reports - Pursuant to 45 CFR § 155.1320(b), and 45 CFR § 155.1324(a), the Division will conduct periodic reviews related to the implementation of the waiver. A report on the operation of the reinsurance program, including the plan for processing claims received, will be submitted by February 28, 2020. The Colorado DOI will report on the operation of the waiver quarterly, including, but not limited to providing reports of any ongoing operational challenges, and plans and results of associated corrective actions, no later than 60 days following the end of each calendar quarter. The DOI will submit their annual report in lieu of their fourth quarter report.

The Division requests that quarterly reporting, other than the required February 28, 2020 report, commence no sooner than June 1, 2020, in order to provide some experience with the program about which to report. The Colorado Division of Insurance will submit and publish annual reports by the deadlines established in 45 CFR 155.1324(c) or the deadlines established by the terms of the waiver.

VI. Supporting Information and Miscellaneous

A. 45 CFR 155.1308(f)(4)(i) – (iii)

The supporting information required by 45 CFR 155.1208(4)(i) – (iii), including the actuarial analyses and certifications, the economic analyses, the detailed deficit neutral 10-year budget plan, and the data and assumptions demonstrating that the proposed waiver is in compliance with 1332(b)(1)(A) – (B) are found in Attachment 1.

VII. Public Comment and Tribal Consultation

A. Public Comment

On April 15, 2019, the Colorado Division of Insurance (DOI or Division) initiated the required public comment period for this Section 1332 waiver application and posted the draft application and a notice of the opportunity to comment on the Division's website at the following link: ([Link to Draft Waiver App on DOI website](#)). On the same date, the DOI sent out notice via email to the list of interested parties and stakeholders that it maintains for such communication. See Attachment 3. The list is comprised of over 1,984 individuals and organizations with an expressed interest in insurance-related matters.

On April 22, 2019, the DOI convened a public hearing from 11:00 AM to 1:00 PM in the Thomas M. McKee Building at the Larimer County Fairgrounds and Events Complex, Loveland, Colorado. Attendance at the hearing numbered [XX]. At the public hearing, [XX] member(s) of the public and interested stakeholders testified on the proposed Section 1332 waiver application. Several stakeholders and members of the public also submitted testimony in writing at the hearing and prior to the hearing. See Attachment 4 for copies of the testimony submitted on April 22, 2019.

On April 29, 2019, the Division held an additional public hearing from 1:00 PM to 3:00 PM in conference room 110D at 1560 Broadway, in Denver, Colorado. Attendance at the hearing numbered [XX]. At the public hearing, [XX] member(s) of the public and interested stakeholders testified on the proposed Section 1332 waiver application. Several stakeholders and members of the public also submitted testimony in writing at the hearing and prior to the hearing. See Attachment 5 for copies of the testimony submitted on April 29, 2019.

The DOI received [XX] written public comments on this waiver request. See Attachment 6 for copies of the written public comments received during the thirty (30) day public comment period. The public comment period closed on May 15, 2019 at 11:59 PM.

B. Tribal Consultation

The DOI scheduled a tribal consultation meeting for representatives of the two federally-recognized tribes in Colorado: the Southern Ute Indian Tribe and the Ute Mountain Ute Tribe. The meeting was held on April 25th, at the Southern Ute Environmental Programs Division offices, in Ignacio, Colorado. Attendance at the tribal consultation consisted of [include names and titles of attendees]. See Attachment 7 for a summary of the issues, concerns, and questions raised by members of the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe during the April 25th consultation, and that were considered in developing the Colorado 1332 Waiver Application.

VIII. Alignment with Section 1332 Principles

Colorado's waiver, if approved, will advance several of the principles described in the October 2018 1332 guidance:

- **Provide increased access to affordable private market coverage.** The reinsurance program will reduce premiums exclusively for those purchasing private health insurance. Specifically, it will reduce premiums for private health insurance in the individual market by approximately 15% - 25% percent, depending on the geographic region of the state, for each of the five years the waiver is in effect. The reinsurance program will also

support competition in the health insurance market, help ensure access to private insurance coverage, and increase participation in the market.

- **Support and empower those in need.** By reducing premiums in the individual market, the waiver will target its impact at those who are not currently eligible for financial assistance and therefore generally face the largest premiums for health insurance. Individuals with incomes under 400 percent of the federal poverty (and who are not eligible for other coverage) are generally eligible for APTC, which generally limits their contribution towards individual market health insurance to a fixed percentage of their income. As a result, they are generally insulated from the impact of premium changes. But individuals with incomes over 400 percent of the poverty line are ineligible for the PTC and therefore must pay the full annual premium without any assistance, which may be several thousands of dollars for a single individual each year, and over ten thousand dollars a year for a family of four.
- **Foster state innovation.** The hospital funding arrangement for Colorado's reinsurance program is an innovative funding method that will prevent the cost of the program from being passed on to consumers, Colorado businesses, and their employees in the way a reinsurance program that relies upon an assessment of health insurance companies would.

[1] A copy of *Colorado House Bill 19-1168, Concerning the creation of the Colorado reinsurance program to provide reinsurance payments to health insurers to aid in paying high-cost insurance claims, and, in connection therewith, authorizing the commissioner of insurance to seek approval from the federal government to waive applicable federal requirements, request federal funds, or both, to enable the state to implement the program and making the program contingent upon waiver or funding approval*, is included with this waiver application and is marked as Attachment 2.]