

# New Jersey 1332 Waiver Extension Application

June XX, 2023

*Marlene Caride, Commissioner  
New Jersey Department of Banking and Insurance  
20 West State Street  
P.O. Box 325  
Trenton, NJ 08625  
[www.nj.gov/dobi](http://www.nj.gov/dobi)*

*in consultation with*

*The Board of Directors of the Individual Health Coverage Program  
20 West State Street  
P.O. Box 325  
Trenton, NJ 08625  
[www.dobi.nj.gov/ihc](http://www.dobi.nj.gov/ihc)*

## Contents

Executive Overview .....	2
Request .....	2
New Jersey Reinsurance Program Overview .....	2
Transition to State-Based Health Exchange – Get Covered New Jersey.....	3
State Subsidy Program - New Jersey Health Plan Savings .....	3
Extension Period Goals and Implementation Overview .....	4
Section 2 - Program Outcomes and Section 1332 Guardrails.....	5
Evaluation and Outcomes Data .....	5
Increased Competition and Consumer Choice .....	6
Section 1332 Guardrails.....	6
Section 3: Updated Economic or Actuarial Analysis for Extension Period .....	7
Economic and Actuarial Analysis .....	7
Section 4: Evidence of Sufficient Authority under State Law .....	10
Statutory Authority .....	11
Section 4: Stakeholder Engagement and Tribal Consultation .....	11
Meaningful public input.....	12
Tribal Consultation.....	12
Section 5: Actuarial and Economic Analysis of Extension Period .....	12

## Executive Overview

---

### Request

The State of New Jersey, through its Department of Banking and Insurance (Department), submits this 1332 State Innovation Waiver Extension request to the Centers 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. New Jersey's currently approved waiver of the Affordable Care Act (ACA) ACA requirement for the single risk pool contained in ACA section 1312(c)(1) allows the state to operate a state-based reinsurance program for the individual health insurance market from January 1, 2019 through December 31, 2023. New Jersey seeks to waive ACA section 1312(c)(1) for an additional waiver period of five years from January 1, 2024 through December 31, 2028, to support the continued operation of its individual market state-based reinsurance program.

The Department requests the 1332 waiver extension without substantive change. The extended timeframe is the only change to the existing 1332 waiver. The waiver extension will continue to abide by the Specific Terms and Conditions set forth by CMS, adhere to the guardrails established by Section 1332, as well as principles laid out in guidance from CMS, and will not affect other provisions of the ACA.

### New Jersey Reinsurance Program Overview

New Jersey's reinsurance program was authorized by the New Jersey Health Insurance Premium Security Act (the Act), P.L.2018, c.24, which passed the New Jersey Legislature on April 12, 2018, and was signed into law on May 30, 2018. New Jersey's reinsurance program was highly successful in its first five years (2019 to 2023).

The Act established a reinsurance program called the Health Insurance Premium Security Plan to be administered by the New Jersey Individual Health Coverage Program Board of Directors (IHC Board or Board). The IHC Board is a State agency that is "in but not of" the Department. The Commissioner of the Department sits ex officio as one of the Board's members. The Act provides that the Board, subject to the disapproval of the Commissioner, shall design and adjust the payment parameters of the reinsurance program to stabilize or reduce premium rates in the individual health insurance market by achieving between a 10% and 20% reduction in what indicated premium rates would be for the applicable benefit year without the reinsurance plan. P.L.2018, c.24, §4g(1) and 5. Under the extension, the State will continue to target approximately a 15% reduction in what premium rates would be without the reinsurance plan.

The Commissioner applied for and received approval for federal funds through a 1332 Innovation Waiver in August of 2018, which supported the creation of a reinsurance program.<sup>1</sup> Therefore, the reinsurance program took effect on January 1, 2019. With the

---

<sup>1</sup> <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-STC-NJ-Signed.pdf>

reinsurance program, carriers selling plans in the individual market request reimbursement for reinsurance-eligible claims and, as a result, the reinsurance program has reduce individual health insurance rates. As a result of the reinsurance program, in 2019, 2020, 2021, 2022, and 2023 individual health insurance premiums were approximately 15 percent lower than they would have been without reinsurance.

The majority of the funding of reimbursement requests under the reinsurance program comes from federal funds made available through the 1332 Innovation Waiver. The balance of the necessary funding comes from revenue raised by the “New Jersey Health Insurance Market Preservation Act,” and the General Fund. The sources of this funding are as follows:

- (1) all funds collected by the State pursuant to P.L.2018, c.31 which establishes a State shared responsibility tax equal to a taxpayer’s federal penalty that would apply for the taxable year under section 5000A of the Internal Revenue Code of 1986;
- (2) federal pass-through funding granted in response to this waiver application; and
- (3) annual appropriation out of the General Fund of the State in an amount as the board, in consultation with the Commissioner, determines necessary to fully fund the plan.

### **Transition to State-Based Health Exchange – Get Covered New Jersey**

New Jersey also enacted legislation in June of 2019 to establish a State-based Exchange pursuant to P.L. 2019, c. 141, codified at N.J.S.A. 17B:27A-57 through 59. For plan year 2020, New Jersey transitioned to a State-based exchange on the federal platform, followed the next year by transition to a full State-based exchange. Jersey’s State-based Exchange, Get Covered New Jersey, began operating in Plan Year 2021.

### **State Subsidy Program - New Jersey Health Plan Savings**

New Jersey’s state subsidy, New Jersey Health Plan Savings (NJHPS), began being delivered in plan year 2021. The NJHPS makes individual health coverage more affordable in New Jersey and are in addition to federal tax credits. These savings are delivered to income-eligible consumers through Get Covered New Jersey. The NJHPS were expanded along with the expanded federal subsidies in 2021. The implementation of expanded federal subsidies under the American Rescue Plan Act and the passage of the Inflation Reduction Act, which was signed by President Biden in August 2022, allowed New Jersey to also expand the availability of NJHPS. NJHPS are available to those with an annual household income of up to 600 percent of the federal poverty level. New Jersey continues to see record enrollment, in part, as a result of this federal and State partnership to expand access to financial assistance.

### **Easy Enrollment Health Insurance Program**

On June 30, 2022, Governor Murphy signed into law P.L.2022, c.39 creating the New Jersey Easy Enrollment Health Insurance Program to make it easier for residents to obtain health

insurance through Get Covered New Jersey.<sup>2</sup> Through this program, uninsured and underinsured residents can indicate their interest in coverage for themselves or a household member on their tax return or through unemployment insurance benefit claims, which will be shared with Get Covered New Jersey.

As required by the legislation, Get Covered New Jersey will create a system to analyze the data collected through tax returns and unemployment benefit claims to determine a resident's eligibility for health insurance coverage and ability to receive financial help and proactively connect with qualifying residents to help them enroll. The law also permits the Get Covered New Jersey to work with the New Jersey Department of Human Services to determine an individual's eligibility for NJ FamilyCare and share data with the agency for that assessment. Implementation of the Easy Enrollment Health Insurance Program is planned to begin for the 2023 tax filing year, which is filed in 2024.

### **Extension Period Goals and Implementation Overview**

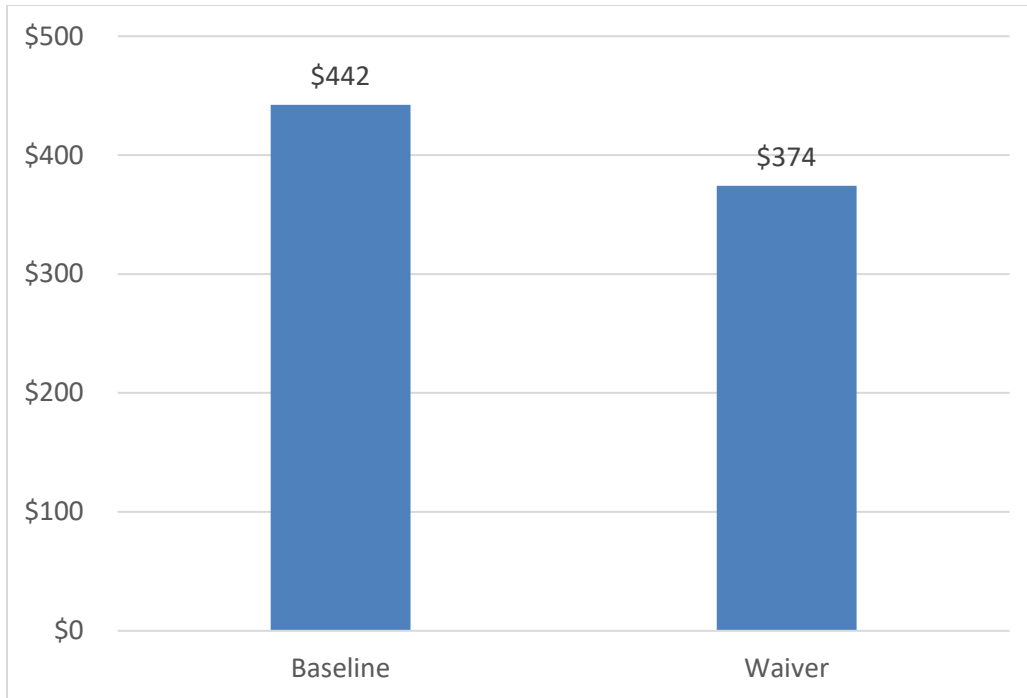
The goals for the five-year waiver extension period center around maintaining the premium reductions achieved in the program's first five years. Actuarial analysis for the waiver extension period estimates the reinsurance program will reduce premium rates by approximately 15.8% in 2024.<sup>3</sup> With a total program cost of \$571.0 million in 2024, the estimated second lowest cost silver individual market premium for a 21-year old, living in Bergen County is expected to be reduced \$68, from \$442 to \$374 per month.

**Chart 1:** Estimated Second Lowest Cost Silver ACA 2024 Monthly Premium Rate for a 21 Year Old in Bergen County

---

<sup>2</sup> [https://pub.njleg.state.nj.us/Bills/2022/PL22/39\\_.PDF](https://pub.njleg.state.nj.us/Bills/2022/PL22/39_.PDF)

<sup>3</sup> The market wide average premium rate impact is estimated at 15.3% without impact of improved morbidity and at 15.8% with impact of improved morbidity.



Reinsurance is also expected to continue increasing enrollment in New Jersey’s individual market. As shown in Chart 3 below, Oliver Wyman analysis indicates that individual market enrollment is predicted to be roughly 10,000 members higher in 2024 with reinsurance under the Waiver than enrollment would be absent the program under the Baseline.

## Section 2 - Program Outcomes and Section 1332 Guardrails

*Preliminary evaluation data and analysis of observable outcomes from the existing waiver program, which includes quantitative or qualitative information on why the state believes the program did or did not meet the statutory guardrails. For example, the state may provide information comparing the originally projected premium reductions or expected claims reimbursements to the actual values of the outcomes observed*

The New Jersey reinsurance program successfully reduced premiums and increased enrollment over the five-year waiver period. The program has also fully complied with Section 1332 statutory guardrails.

### Evaluation and Outcomes Data

For the first three years of the program from 2019 to 2021, premium rates for plans offered in New Jersey’s marketplace were reduced by an average between 15.49% to 16.93% for the second lowest cost silver (SLCS) plan, relative to premiums that would have existed absent the

waiver.<sup>4</sup> In 2022 the premium rates for the SLCS plan were reduced between 15.3% and 17.0%<sup>5</sup> and in 2023 between 14.1% and 15.3%.<sup>6</sup> The premium rate reductions in the first five years of the program are in line with the goal of the program which is to reduce premium rates between 10% and 20% with the explicit goal of a 15% target rate reduction. Unsubsidized enrollees realized the largest savings in enrollee premium spending, with annual reductions in 2023 ranging from \$676 to \$772 for the SLCS plan for a 21-year-old, relative to the baseline. Enrollee premium spending among those in the income range eligible for premium tax credits (138% to 400% of FPL prior to 2021 and above 138% FPL in 2021 and later) did not change significantly as a result of the waiver.

## Increased Competition and Consumer Choice

In addition to premium stability, carriers have re-entered the market. This has created additional competition and increased consumer choice across the State. In 2023, six carriers are participating in the individual market, with five of those offering coverage on Get Covered New Jersey. That is an increase from four carriers in the individual market in 2019 and three participating on the Exchange at that time.

## Section 1332 Guardrails

New Jersey's reinsurance program adhered to all four ACA Section 1332 statutory guardrails in its first five years and will continue adhering to the guardrails during the five-year waiver extension period. A description of how the reinsurance program meets each of the statutory guardrails is below.

A. Scope of Coverage (1332(b)(1)(C)). The Section 1332 Waiver extension will provide coverage to at least a comparable number of New Jersey's residents as would be covered absent the waiver.

B. Affordability (1332(b)(1)(B)). The Section 1332 Waiver extension will provide coverage and cost-sharing protections against excessive out-of-pocket spending that results in coverage which is at least as affordable for New Jersey's residents as would be provided absent the waiver.

C. Comprehensiveness (1332(b)(1)(A)). The Section 1332 Waiver extension will provide coverage that is at least as comprehensive for New Jersey's residents as would be provided absent the waiver.

D. Deficit Neutrality (1332(b)(1)(D)). The Section 1332 Waiver extension will not increase the federal deficit. Summarized Expected Impact of the Proposed Section 1332 Waiver Extension Requirement Impact of Proposed Section 1332 Waiver Extension Scope of Coverage The number of individuals covered in the New Jersey health insurance markets is expected to increase. Affordability of Coverage Gross premium rates in the Individual ACA market are expected to decrease while other out-of-pocket expenses are not expected to change. Comprehensiveness of Coverage Not impacted by

---

<sup>4</sup> CCIIO Data Brief Series: State Innovation Waivers: State-Based Reinsurance Programs August 2021 - Table 3 <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/1332-Data-Brief-Aug2021.pdf>

<sup>5</sup> CCIIO March 22, 2022 State Specific Premium Data for Section 1332 Waiver 2022 Pass-through Calculation: NJ\_SLCS tab: <https://www.cms.gov/files/document/1332-state-specific-premium-data-2022.xlsx>

<sup>6</sup> CCIIO March 30, 2023 State Specific Premium Data for Section 1332 Waiver 2022 Pass-through Calculation: NJ\_SLCS tab: <https://www.cms.gov/files/document/1332-key-components-pass-through-estimate-march-2023.xlsx>

the proposed Section 1332 Waiver extension. Deficit Neutrality The federal deficit is not expected to increase.

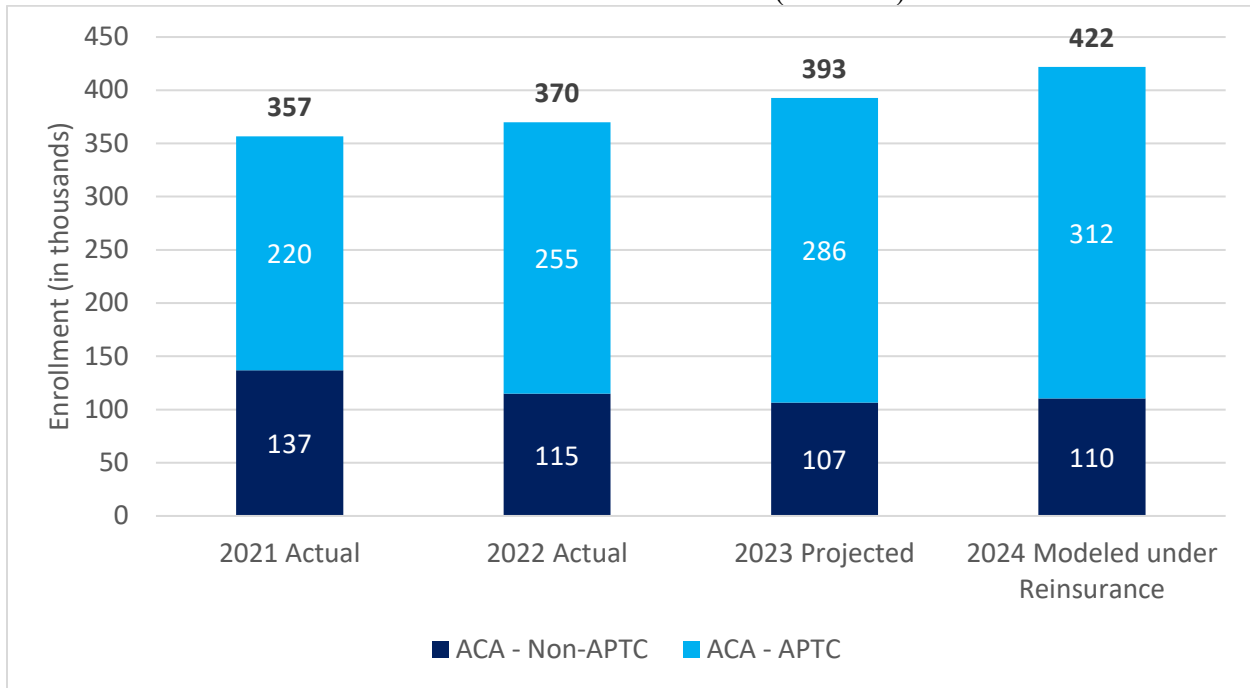
### **Section 3: Updated Economic or Actuarial Analysis for Extension Period**

*Updated economic or actuarial analyses for the extension period, if the state is aware of changes in state law, the state insurance market, or to the waiver program that are allowable under the STCs and impact waiver assumptions and projections, and that the state has not previously shared with the Departments via its reporting requirements.*

### **Preliminary Actuarial Analysis for 2024**



**Chart 2:** Individual ACA Market Enrollment 2021 to 2024 (In 1000s)



The 2024 Modeled under Reinsurance enrollment shown in Chart 2 reflects projected enrollment levels in 2024, split between those individuals receiving advance premium tax credits (APTCs) and those individuals who do not receive APTCs. As shown, with the 1332 waiver and corresponding reinsurance program, total enrollment volume in New Jersey’s Individual ACA market is expected to increase in 2024 compared to 2022 and 2023. Key assumptions being incorporated into the 2024 projection are that Medicaid eligibility redetermination would lead to an increase the Individual ACA market enrollment of roughly 24,000 over 2023 levels, and draft regulations regarding federal subsidies for the DACA population<sup>7</sup> would increase the enrollment by roughly 2,800 over 2023 levels. We assumed that carrier pricing in 2024 will incorporate the following items: 8.3% average premium trend based on health plan specific trends and 7.0% claims trend.

Additional key assumptions which underlie the 2024 Modeled under Reinsurance enrollment projection shown above include the following: Cost sharing reduction (CSR) subsidies will continue to be unfunded by the federal government and carriers will continue to load premiums for their on-Exchange silver plans by an amount equal to the lost CSR payments from the federal government, carrier plan and network offerings will be similar to those available to consumers in 2023, carrier pricing assumptions will be similar to those used in 2023, there will be no significant carrier entries or exits, and there will be no additional significant legislative changes at either the state or federal level.

<sup>7</sup> <https://www.federalregister.gov/documents/2023/04/26/2023-08635/clarifying-eligibility-for-a-qualified-health-plan-through-an-exchange-advance-payments-of-the>

**Chart 3:** Individual ACA Market Enrollment in 2024 under Baseline and Waiver Scenario (In 1000s)

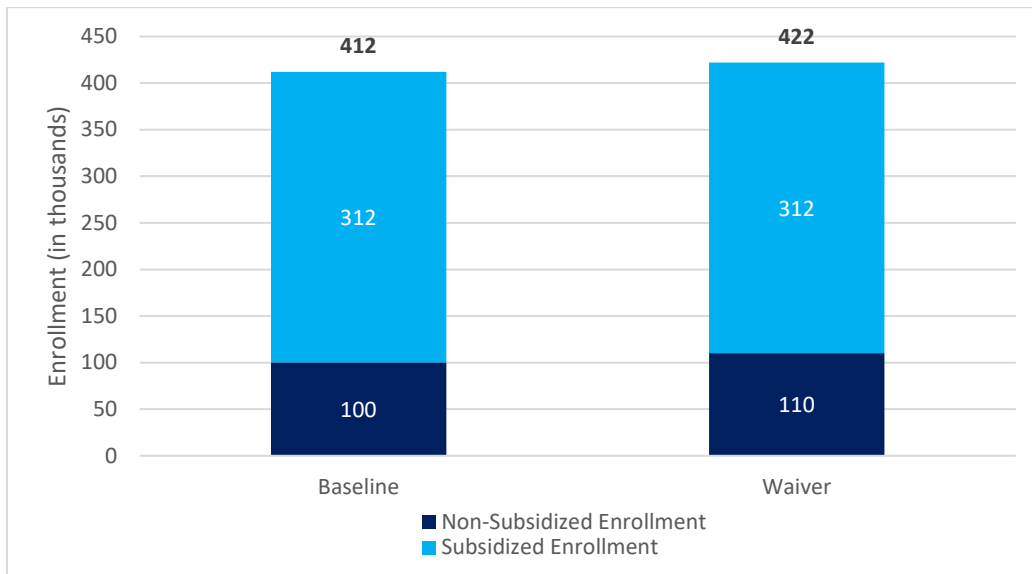


Chart 3 above demonstrates how enrollment in New Jersey’s Individual ACA market would be expected to change assuming reinsurance program funding resulting in a total reduction to premium rates equal to 15.8% were to be implemented starting in 2024. As shown, the impact of the reinsurance program on enrollees receiving APTCs in 2024 is expected to be minimal as the net premium rates paid by those subsidized enrollees (i.e., net of APTCs) are, on average, mostly insulated from changes in gross premium rates. On the other hand, the volume of enrollees who do not receive APTCs (non-subsidized) is expected to increase, driven primarily by uninsured individuals expected to enter the Individual ACA market as a result of lower rates.

We note that, in the reinsurance waiver scenario shown, it is being assumed that carriers will reduce their 2024 premium rates from the levels assumed under the 2024 Modeled Baseline by the percentage of carrier costs expected to be funded by the reinsurance program (i.e. 15.3%), plus an additional amount equal to 0.5% to reflect an expected improvement in the average morbidity of the Individual ACA market, for a total change in premium rates equal to -15.8%.

**Table 1:** New Jersey’s Reinsurance Program Design in 2024 (Estimated Parameters)

<b>Attachment Point</b>	\$35,000
<b>Coinsurance Percentage</b>	50%
<b>Cap</b>	\$270,000

**Table 2:** Net Cost of Reinsurance Program to the State of New Jersey in 2024 in Millions

	<b>2024 Baseline</b>	<b>2024 with Reinsurance</b>	
<b>Reinsurance Pool Cost</b>	-	\$571.0	A
<b>PTC Spending</b>	\$2,323.7	\$1,901.1	
<b>Federal Pass-Through Funding</b>	-	\$422.5	B
<b>Pass-Through % of Total Cost</b>	-	74%	= B / A
<b>Expected Net Cost to the State</b>	-	\$148.5	= A – B

As shown in Table 2 above, the total projected cost (i.e., “Reinsurance Pool Cost”) of a reinsurance program that would reimburse approximately 16.8% of carrier expenses in New Jersey’s Individual ACA market in 2024 is estimated at \$571.0 million.<sup>8</sup> However, through the submission and approval of a 1332 waiver, much of the funding needed for the reinsurance program would be expected to be received in the form of federal pass-through payments, resulting in a net cost to New Jersey which is expected to be significantly lower at \$148.5 million.

Since the proposed reinsurance program is expected to result in a significant decrease in gross premium rates (i.e., premium rates prior to the application of APTCs) for all individuals enrolled in Individual ACA plans, federal spending on PTCs would be expected to decrease by a significant amount as well. Overall, we are projecting that federal PTC spending will decrease by approximately \$422.5 million between the 2024 Modeled Baseline and Reinsurance Waiver scenario. The federal APTC savings would be expected to be reduced by an assumed PTC to APTC ratio of 94.2%. The ratio accounts for the expectation that actual federal premium tax credits calculated on federal tax forms during the tax filing season will be lower than the initial estimate of APTCs during the coverage year due to revised and reconciled household income.

Based on the above, the expected net liability to New Jersey in order to fund a reinsurance program that reimburses approximately 16.8% of carrier expenses in New Jersey’s Individual ACA market in 2024 is expected to be approximately \$148.5 million (i.e., \$571.0 million minus 422.5 million).

#### **Section 4: Evidence of Sufficient Authority under State Law**

*Evidence of sufficient authority under state law(s) in order to meet the PPACA section 1332(b)(2)(A) requirement for purposes of pursuing the requested extension.*

<sup>8</sup> Excludes costs associated with the ongoing administration of the reinsurance program

## Statutory Authority

As described above, New Jersey’s reinsurance program was authorized by the Act, P.L.2018, c.24, which was signed into law on May 30, 2018.<sup>9</sup> The statutory language in the Act authorizes the Commissioner to extend the reinsurance program. The Act provides that the Commissioner, and the board of directors of the New Jersey Individual Health Coverage Program, are “authorized to apply for, accept and receive federal funds to implement and sustain market stabilization programs.”<sup>10</sup> The Act goes on to provide that the commissioner shall apply to the United States Secretary of Health and Human Services under 42 U.S.C. s.18052 for a waiver of applicable provisions of the Affordable Care Act with respect to health insurance coverage in the State for a plan year beginning on or after January 1, 2019, to effectuate the provisions of this act.<sup>11</sup> The Act does not specify a time period or limit the Commissioner’s authority to apply for a waiver to effectuate the provisions of the act, which is intended to allow the Commissioner to “implement and **sustain** market stabilizations programs.”<sup>12</sup> The Act also states that, if the waiver is approved, the commissioner may accept the waiver so long as the commissioner determines that implementation of the plan: a. will be beneficial to policyholders; and b. is expected to stabilize or reduce premiums in the individual health insurance market through a reduction in what indicated premium rates would be without the plan.<sup>13</sup> In submitting this extension application, the Commissioner has found that the reinsurance program does, in fact, continue to benefit policyholders and is expected to continue stabilizing or reducing premiums in the individual health insurance market from they would be without the program. Notably, the Act has no sunset provision and remains operative contemplating reporting every 5 years, which coincides with the time period in the extension request.<sup>14</sup>

## Section 4: Stakeholder Engagement and Tribal Consultation

*An explanation and evidence of the process to ensure meaningful public input on the extension request, which must include:*

- *For a state with one or more federally-recognized Indian tribes within its borders, providing a separate process for meaningful consultation with such tribes, and providing written evidence of the state’s compliance with this requirement.*
- *Publicly posting the submitted LOI on the state’s website to ensure that the public is aware that the state is contemplating a waiver extension request*
- *Publicly posting the waiver extension application on the state’s website upon its submission of the waiver extension application to the Departments.*

*The state does not have to meet all of the public notice requirements specified for new waiver applications in 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312 (e.g., holding two public hearings and providing a 30-day comment period) to fulfill paragraph (5) above. However, the state must ensure and demonstrate there was an opportunity for meaningful public input on the extension request. For example, the state may choose to hold one public hearing or provide an amended or shorter comment period, or some combination of both. If the state holds one public hearing, it*

---

<sup>9</sup>[https://pub.njleg.state.nj.us/Bills/2018/PL18/24\\_.PDF](https://pub.njleg.state.nj.us/Bills/2018/PL18/24_.PDF)

<sup>10</sup> N.J.S.A.17B:27A-10.2

<sup>11</sup> N.J.S.A.17B:27A-10.9

<sup>12</sup> N.J.S.A.17B:27A-10.2

<sup>13</sup> Id.

<sup>14</sup> See N.J.S.A.17B:27A-10.7e. (1)

*can use its annual public forum for the dual purposes of gathering input on the existing waiver as well as the extension application request.*

### **Meaningful public input**

The Department has a dedicated 1332 Waiver page on its state website. Materials posted to this page include the state’s letter of intent and will include the waiver extension application that is submitted to the Departments.

[https://www.state.nj.us/dobi/division\\_insurance/section1332/index.html](https://www.state.nj.us/dobi/division_insurance/section1332/index.html)

On June 14, 2023, the Department of Banking and Insurance opened public comment on this waiver extension request and posted notice of the opportunity to comment on the Department’s website at [www.state.nj.us/dobi/division\\_insurance/section1332/](http://www.state.nj.us/dobi/division_insurance/section1332/). The Department notified interested parties and stakeholders by email, notified the Secretary of State for posting of notice at the Office of the Secretary of State and to provide notice to the press, and posted notice in three newspapers throughout the state.<sup>15</sup>

On June X, 2023, the Department held a public hearing in room XX in the Department of Banking and Insurance Building at 20 West State Street, Trenton, New Jersey. At the public hearing:

The Department held a second public hearing on June XX, 2023 at XXXX.

During the public comment period the Department also received XX written public comments on this waiver request by email, in addition to one written comment received at the public hearings.<sup>16</sup> The public comment period closed at the end of the day on July 5, 2023.

### **Tribal Consultation**

The State of New Jersey does not have any Federally recognized Indian tribes within its borders, and thus, has not established a separate process for meaningful consultation with any tribes with respect to this 1332 waiver application.

## **Section 5: Actuarial and Economic Analysis of Extension Period**

*Updated economic or actuarial analyses for the extension period, if the state is aware of changes in state law, the state insurance market, or to the waiver program that are allowable under the STCs and impact waiver assumptions and projections, and that the state has not previously shared with the Departments via its reporting requirements.*

The Department contracted with Oliver Wyman to perform actuarial and economic analysis for the extension period of the waiver. No state legislative changes are expected to impact New Jersey’s reinsurance program during the waiver extension period. See Oliver Wyman’s Actuarial and Economic Analysis attached to this application.

---

<sup>15</sup> See Appendix **Attachment X**.

