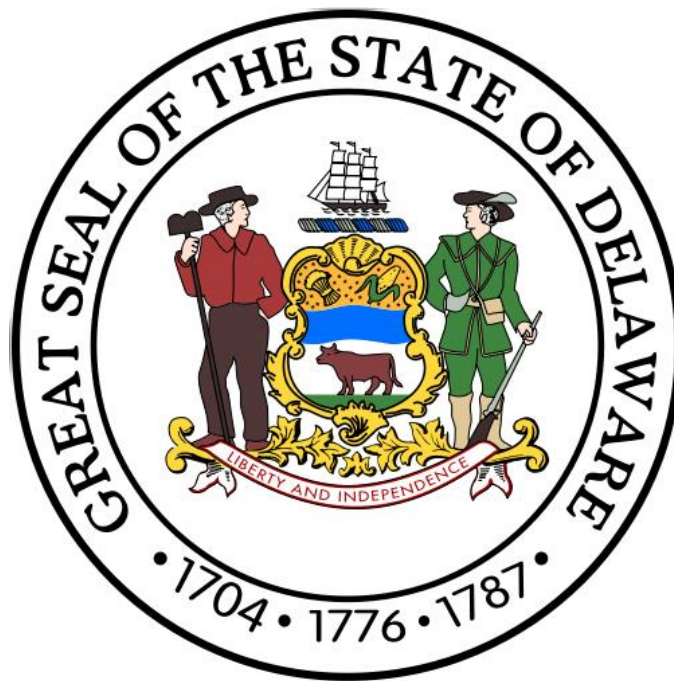


State of Delaware

1332 State Innovation Waiver Five-Year Extension

Application 2025-2029



Delaware Department of Health and Social Services

Josette D. Manning, Esq. Cabinet Secretary

March 12, 2024

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Summary

A. Extension Request

Josette D. Manning, Esq., Cabinet Secretary of the Delaware Department of Health and Social Services, on behalf of the State of Delaware, will submit an 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 to the United States Department of the Treasury (Treasury). Currently, Section 1312(c)(1) of the Affordable Care Act (ACA) was waived for years 2020 through 2024 to allow the state to implement a state-based and state-administered reinsurance program.¹ To allow for continued operation of this program, this 1332 waiver extension request will be for an additional five-year period beginning January 1, 2025 and ending December 31, 2029. The only change to Delaware's existing 1332 waiver will be the extended timeframe and Delaware's 1332 waiver will not seek to waive any other sections of the ACA.

Delaware's 1332 waiver extension, if approved, would continue the reinsurance program that has significantly lowered gross premium rates in the Individual market and reduced the payment of premium tax credits (PTCs) by the federal government.

B. Background and Goal of the Reinsurance Program

Delaware believes that a sustainable, affordable Individual market for health insurance is important, and Delaware's Individual market has grown significantly since the initial implementation of its reinsurance program in 2020. The State believes that an effective mechanism to help sustain an affordable Individual market is through the extension of the state-based reinsurance program. The current Delaware reinsurance program utilizes an attachment-point model of reinsurance, financed by a premium assessment on health insurance issuers. Under this extension request, the only change to Delaware's existing 1332 waiver will be the extended timeframe. Continuing to sustain an affordable Individual market through the spreading of risk among the larger statewide health insurance market represents appropriate public policy.

Delaware's Section 1332 waiver extension will propose the continuation of a reinsurance program that is expected to lower gross premium rates (i.e., prior to the application of advance premium tax credits) in the Individual ACA market by, on average, 15.0% for the 2025 plan year and improve morbidity in the risk pool by approximately 0.3%, resulting in an overall reduction to premium rates (i.e., relative to if no reinsurance program were in place) equal to 15.3%. These estimates are relative to actuarial projections of a 2025 plan year without a reinsurance program in effect.

C. Compliance with ACA Section 1332

1. GUARDRAILS

As detailed more fully in the next section, Delaware's Section 1332 waiver extension application, if approved and implemented, would abide by the four guardrails imposed under Section 1332 of the ACA.² Delaware's Section 1332 waiver extension proposal does not seek to alter or affect the comprehensiveness of coverage in Delaware's market for health insurance. Additionally, the Section 1332 waiver extension proposal will not result in health insurance being less affordable than it would be without an extension; rather, it will reduce gross premium rates in the Individual ACA market compared to a scenario without an extension. Regarding the scope of coverage guardrail, Delaware's Section 1332 waiver extension is expected to increase enrollment in the Individual ACA market compared to a scenario

¹ Section 1312(c)(1) states that "A health insurance issuer shall consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the individual market, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool."

² <https://www.govinfo.gov/content/pkg/FR-2018-10-24/pdf/2018-23182.pdf>

without an extension. Finally, Delaware’s Section 1332 waiver extension will not result in increased spending, administrative or other expenses to the federal government. Delaware’s Section 1332 waiver extension will request pass-through funding in the amount of reductions in PTC payments made by Treasury, which the federal government would have otherwise been statutorily obligated to make.

2. PASS-THROUGH FUNDING

Delaware’s Section 1332 waiver extension proposal will request that Treasury “pass-through” to Delaware’s reinsurance program the cost savings from the reduction of federal outlays of PTCs resulting from the reduction in rates in the Individual ACA market due to the reinsurance program. Section 1332(a)(3) of the ACA authorizes pass-through funding in Section 1332 waiver applications.

3. PUBLIC NOTICE AND COMMENT

Delaware is releasing this comprehensive description of its Section 1332 waiver extension proposal for public comment. Additionally, Delaware will hold a public hearing on March 21, 2024. Delaware will also accept comments from the public regarding the Section 1332 waiver extension proposal.

Delaware’s Department of Health and Social Services has created a webpage, at <https://dhss.delaware.gov/dhss/dhcc/reinsur1332waiver.html>, which contains a draft of the Section 1332 waiver extension proposal, a mechanism for electronically submitting comment (1332waiver@delaware.gov), notice of public hearing, and other information intended to give the public the ability to understand Delaware’s Section 1332 waiver extension application.

Compliance with Section 1332 Guardrails

The ACA contains provisions that encourage states to innovate regarding health insurance coverage and avoid situations where a one-size-fits-all approach implemented through federal regulation may have negative effects in specific states. The provision at the center of this Section 1332 waiver extension proposal is Section 1332 of the ACA, which allows states to modify or waive certain provisions of the ACA. However, there are certain “guardrails” in that authorization which place limitations how Section 1332 waivers can be used by states. The guardrails outlined in Section 1332 of the ACA are intended to ensure that comprehensive, affordable healthcare coverage continues to be made available in a state to at least as many individuals as would have access absent a waiver, while not increasing the federal deficit.

A. Section 1332 Guardrails

1. Comprehensiveness of Coverage

The first of the four guardrails requires that any Section 1332 waiver must ensure coverage provided in the market after the implementation of the waiver that is “at least as comprehensive” as would be available without the implementation of a Section 1332 waiver and offered through the Exchange.

The only change to Delaware’s existing Section 1332 waiver will be the extended timeframe. Delaware’s Section 1332 waiver extension does not in any way seek to alter the requirements of coverage under state benefit mandates or under the ACA’s required coverages, including the essential health benefits requirement under section 2707 of the Public Health Service Act.

2. Affordability of Coverage

A Section 1332 waiver must provide “coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable” for the State’s residents as would be available absent the implementation of the Section 1332 waiver. Affordability is measured by comparing an individual’s net out-of-pocket spending, including premium contributions, cost-sharing, and spending on non-covered services.

The only change to Delaware’s existing Section 1332 waiver will be the extended timeframe. Delaware’s Section 1332 waiver extension would not require or encourage issuers to alter cost-sharing designs or network coverage. In addition, by continuing the reinsurance program which has lowered gross premium rates, Delaware’s Section 1332 waiver extension would reduce premium contributions made by a number of individuals (e.g., those individuals who do not receive advance premium tax credits) and reduce the overall cost of health insurance in the Individual ACA market. Overall, if approved, the Section 1332 waiver extension is expected to make coverage more affordable in the Individual ACA market.

3. Scope of Coverage

Section 1332 requires that states must provide coverage to “at least a comparable number of the State’s residents” as would have been covered without the waiver.

The only change to Delaware’s existing Section 1332 waiver will be the extended timeframe. Delaware’s Section 1332 waiver extension is expected to increase the number of enrollees in the Individual ACA market due to the reduction in rates resulting from the reinsurance program. Actuarial analyses and projections estimate that the number of Individual ACA market enrollees would increase for the 2025 plan year, relative to if no reinsurance program were in place.

4. Deficit Neutrality

Section 1332 requires that a waiver must not increase the federal deficit in each year of the waiver. All changes in federal revenues and outlays resulting from an approved Section 1332 waiver must be considered.

The only change to Delaware’s existing Section 1332 waiver will be the extended timeframe. Delaware’s Section 1332 waiver extension, if approved, would not increase either the federal deficit or federal revenues or outlays. The reinsurance program proposed in Delaware’s Section 1332 waiver extension would seek pass-through funding that is equal to, but not greater than, the amount of money in PTCs that Treasury would otherwise pay without a reinsurance program under a Section 1332 waiver. In other words, federal expenditures would not be expected to change as a result of the waiver.

Description of Section 1332 Waiver Extension Proposal

Delaware will submit a Section 1332 waiver extension application that seeks to extend the current state-based reinsurance program in order to help sustain an affordable Individual ACA market. Delaware’s Section 1332 waiver extension application will seek approval to waive ACA section 1312(c)(1); Delaware will not seek approval to waive any other provisions of law. The waiver application submitted by Delaware, if approved and implemented, would take effect for the 2025 plan year and remain in effect for five years.

A. Delaware’s Reinsurance Program

Senate Concurrent Resolution 70 (SCR 70) was passed on June 28, 2018, and authorized the State’s initial Section 1332 waiver application. The establishment of a state-based reinsurance program and the securement of a funding source for that reinsurance program was established in the Delaware Health Insurance Individual Market Stabilization and Reinsurance Program Assessment (18 Del. C. §8703), which was passed on June 20, 2019. Delaware received approval from CMS on August 20, 2019 for its current reinsurance program.

B. Reinsurance Program Structure

The Delaware Health Care Commission (DHCC) was previously created by 16 Del. C. §9902. Per the Delaware Health Insurance Individual Market Stabilization and Reinsurance Program Assessment, the

DHCC is charged with the following responsibilities associated with the operation of the reinsurance program.

- 1) To provide reinsurance to issuers that offer individual health benefit plans³ in the State.
- 2) Establish procedures for the handling and accounting of program assets and monies, as well as for an annual fiscal reporting to the Commission, Insurance Commissioner and General Assembly.
- 3) Annually establish procedures and parameters for reinsuring risks, including all of the following: an attachment point, a coinsurance rate, and a coinsurance cap.
- 4) Establishing procedures and standards for issuers to submit claims to be reinsured under the program.
- 5) Establishing procedures for selecting an administering contractor and setting forth the power and duties of the administering contractor.
- 6) Establishing procedures for quarterly reporting or annual reporting, or both, of data under the §1332 waiver to demonstrate that the waiver remains in compliance with the scope of coverage, affordability, comprehensiveness, and deficit requirements.
- 7) Establishing procedures for providing each year the actual Second Lowest Cost Silver Plan premium under the Affordable Health Care Act's [42 U.S.C. §18001 et seq.] §1332 waiver and an estimate of the premium as it would have been without the waiver.
- 8) Providing for any additional matters necessary for the implementation and administration of the reinsurance program.

C. Reinsurance Program Financing and Projected Reduction in Rates

The Delaware Health Insurance Market Stabilization Reinsurance Program Assessment authorizes the Insurance Commissioner to assess issuers⁴ to finance the reinsurance program. The assessment is equally applied to all issuers based upon their premium tax liability, or the amount of the issuer's premium tax exemption value for the previous calendar year. The assessment is 2.75% annually in years that the Health Insurance Providers Fee (i.e., as defined under 9010 of the Affordable Care Act) is waived, and 1% of premium annually in years that the Health Insurance Providers Fee is assessed. The purpose of the assessment is to fully finance the State's liability related to the reinsurance program. The State of Delaware may not hold more than 5 years of operating and administrative funds to cover the expected cost of the reinsurance program. In the event collections exceed that amount, the state must notify the issuers that the following year's assessment will be waived.

Delaware's Section 1332 waiver application assumes a reinsurance program is in place that results in a 15.3% rate reduction for the 2025 plan year, relative to if no reinsurance program were in place. Actuarial modeling predicts that Delaware will need to secure \$23.3 million in financing to secure a corresponding \$71.5 million in federal pass-through funding to achieve a 15.3% rate reduction for the 2025 plan year. The total reinsurance pool for the 2025 plan year is projected to be \$94.8 million. The \$23.3 million in state-secured financing would be the amount of money that, when added to any amount required to finance the administrative costs of the reinsurance program, would represent the total amount that needs to be covered via the insurer assessment.

³ Any policy offered in the Delaware's Individual market that is subject to the single risk pool requirements of § 1312(c)(1) of the Affordable Care Act.

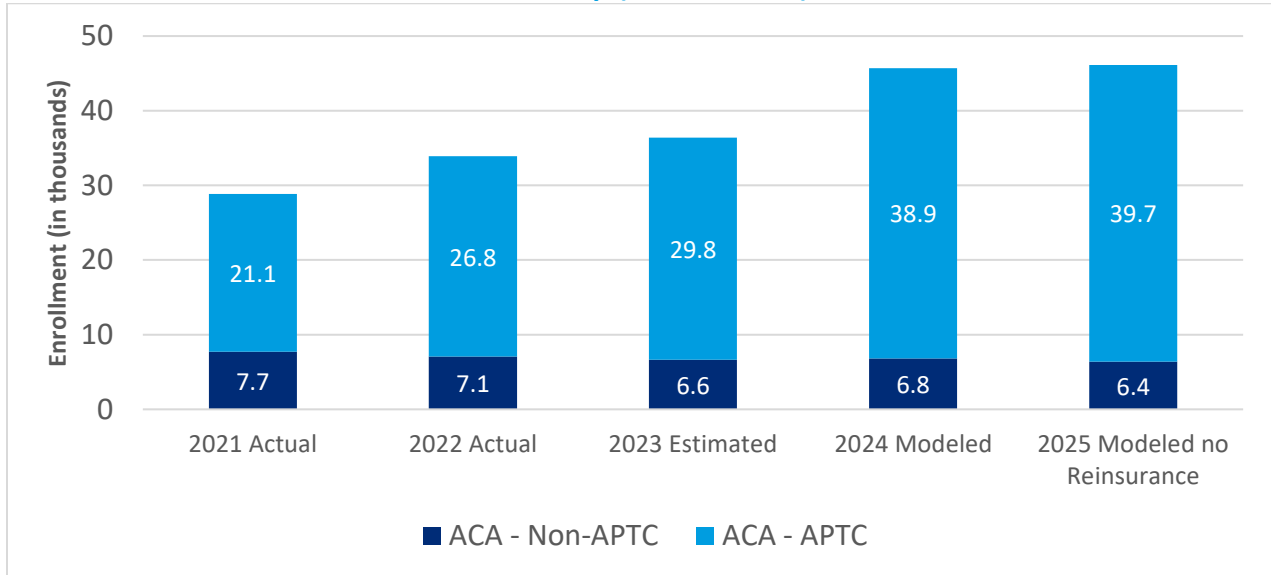
⁴ Any entity that provides health insurance in the State of Delaware. Issuer includes an insurance company, health service corporation, health maintenance organization, and any other entity providing a plan of health insurance or health benefits subject to Delaware state insurance regulation.

Actuarial and Economic Analyses to Support Waiver Extension Proposal

A. Results of Actuarial and Economic Modeling

The 2025 Modeled Baseline shown in Chart 1 reflects projected enrollment levels in 2025, split between those individuals receiving advance premium tax credits (APTCs) and those individuals who do not receive APTCs. As shown, absent a Section 1332 waiver extension and corresponding reinsurance program, total enrollment volumes in Delaware’s Individual ACA market are expected to decrease slightly from 2024 to 2025.

Chart 1 – Individual ACA Market Membership (2021 to 2025)



Some other key assumptions being incorporated into the 2025 projection are that insurer pricing in 2025 will incorporate the following items: 7.0% premium/claims trend, exchange user fees for 2025 equal to 2.20% of premium, cost sharing reduction (CSR) subsidies will continue to be unfunded by the federal government and issuers will continue to load premiums for their on-Exchange silver plans by an amount equal to the level of the loads used in 2024, issuer plan and network offerings will be similar to those available to consumers in 2024, there will be no significant issuer entries or exits beyond those that occurred for 2024, and there will be no additional significant legislative changes at either the state or federal level.

Chart 2 – 2025 Individual ACA Market Membership

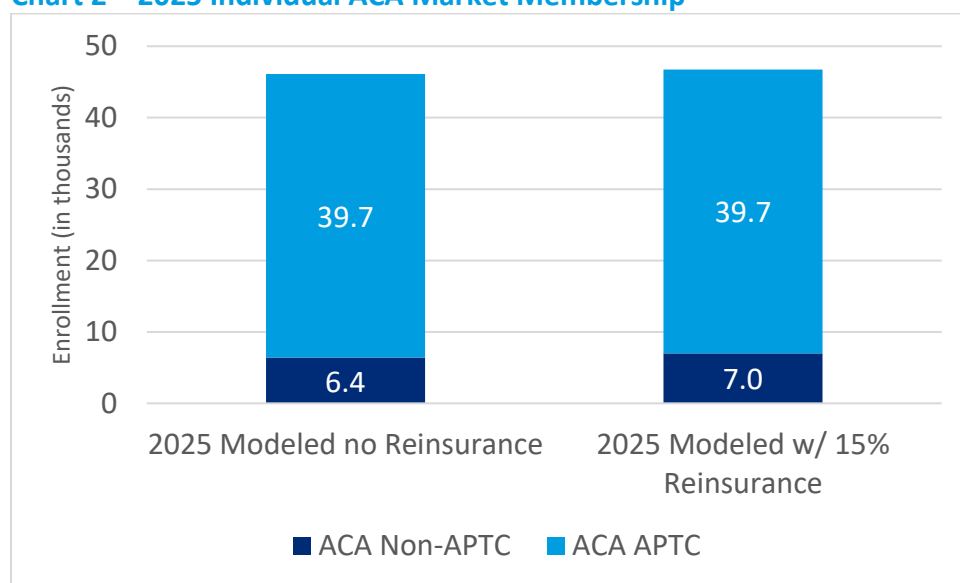


Chart 2 above demonstrates how enrollment in Delaware’s Individual ACA market would be expected to change assuming a reinsurance program resulting in a total reduction to premium rates equal to 15.3%, were in place in 2025. As shown, the impact of the reinsurance program on enrollees receiving APTCs in 2025 is expected to be minimal as the net premium rates paid by those 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 is expected to be higher, driven by lower premium rates due to the presence of the reinsurance program.

We note that, in the reinsurance scenario shown, it is being assumed that issuers will reduce their 2025 premium rates from the levels assumed if there were no reinsurance program, plus an additional amount equal to 0.3% to reflect an expected improvement in the average morbidity⁵ of the Individual ACA market, for a total reduction in premium rates equal to 15.3%.

Table 1 – Net Cost of Reinsurance Program to the State of Delaware

(in millions)	2025 Modeled no Reinsurance	2025 Modeled w/ 15% Reinsurance	
Reinsurance Pool Cost	-	\$94.8	A
Federal PTC Spending	\$343.7	\$270.5	
Gross Pass-Through Savings	-	\$73.2	B
Federal Revenue from Exchange User Fees	\$10.2	\$8.5	
Change in Exchange User Fees	-	-\$1.7	C
Net Cost to the State of Delaware	-	\$23.3	= A - (B+C)

As shown in Table 1 above, the total projected cost (i.e., “Reinsurance Pool Cost”) of a reinsurance program that would reimburse issuer expenses in Delaware’s Individual ACA market in 2025 such that

⁵ On average, the additional individuals who enroll with a 15% reinsurance program would be expected to have lower health risks than those individuals included in the scenario without a reinsurance program.

they would be expected to reduce their premium rates by 15.3% is approximately \$94.8 million.⁶ However, through the submission and approval of the extension of the Section 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 Delaware which is significantly lower than \$94.8 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 \$73.2 million between the 2025 modeled scenarios with no reinsurance program and with a 15% reinsurance program.

The federal PTC savings would be expected to be somewhat offset by a reduction in federal revenue generated from exchange user fees. This is because, as Individual exchange premium rates are lowered through the reinsurance program, federal revenue generated by the 2.20% user fee on coverage issued through the federally-facilitated marketplace would be expected to decrease as well. The reduction in exchange user fees between the 2025 scenarios with no reinsurance program and with a 15% reinsurance program is expected to equal approximately \$1.7 million, resulting in expected net federal pass-through payments to Delaware equal to approximately \$71.5 million (i.e., \$73.2M – \$1.7M).

Based on the above, the expected net liability to Delaware in order to fund a reinsurance program that reimburses issuer expenses in Delaware’s Individual ACA market in 2025 such that they would be expected to reduce their premium rates by 15.3% is projected to be approximately \$23.3 million (i.e., \$94.8M – \$71.5M).

B. Anticipated Program Changes if Enhanced and Expanded APTCs are Extended

The American Rescue Plan Act (ARPA) was enacted on March 11, 2021 and helped make coverage more affordable for thousands of Delawareans in 2021 by increasing the level of APTCs available to those households that were already eligible for APTCs, and expanded APTCs to most households with incomes above 400% FPL for the first time. These additional and expanded APTCs were extended an additional three years as part of the Inflation Reduction Act (IRA) However, under current law these additional and expanded APTCs are temporary and are scheduled to end after 2025.

The State’s proposed reinsurance program is projected to result in an average 8.4% reduction in premium rates for calendar years 2026 through 2029 and was developed under current law. Should Congress pass and the President sign legislation that extends or makes permanent additional and expanded APTCs similar to those made available under ARPA and extended under the IRA, the State anticipates increasing the size of its reinsurance program such that the reinsurance program would instead be projected to result in an average reduction in premium rates of approximately 15.3%, similar to the estimated reduction in calendar year 2025.

Implementation Plan with Timeline

Delaware’s Section 1332 waiver extension application will seek to achieve the following timeline in order to continue the reinsurance program for the 2025 plan year:

- | | |
|------------|--|
| 3/12/2024: | Public comment period begins |
| 3/21/2024: | Public Hearing held |
| 3/29/2024: | Delaware’s Section 1332 waiver extension application is submitted to CMS |

⁶ Includes the impact of morbidity improvement; excludes costs associated with the implementation and ongoing administration of the reinsurance program

6/27/2024:	CMS approves Delaware’s Section 1332 waiver
1/1/2025:	Delaware’s reinsurance program under a Section 1332 waiver continues operation under the extension, compliant with both state and federal law and regulations
4/1/2025:	Federal government provides Delaware pass-through funds for the 2025 plan year

Other Requirements

Delaware’s Section 1332 waiver extension is expected to cause minimal administrative burden and expense to the State and federal governments. The waiver will cause no additional administrative burden to employers and individual consumers because the reinsurance program proposed to be extended by Delaware in its Section 1332 waiver extension does not relate to the administrative functions or requirements typically undertaken by employers or individuals. The administrative burden to health insurance issuers associated with submitting limited data to Delaware will be minimal; however, most issuers will incur a cost for the financing of the reinsurance program under Delaware’s Section 1332 waiver extension in the form of the previously described premium assessment.

The State of Delaware has the resources to conduct the administrative tasks required for a reinsurance program under a Section 1332 waiver:

1. Administration of the reinsurance program.
2. Collection and application for pass-through funding.
3. Monitoring of compliance with state and federal law.
4. Collection and analyses of data related to the Section 1332 waiver.
5. Performing reviews and implementation of the waiver.
6. Submitting any annual, quarterly, or other required reports to the Insurance Commissioner, CMS, and Treasury.

The Section 1332 waiver extension will continue to require the federal government to perform the following administrative tasks, which it already does under the current Section 1332 waiver, and which are minimal in comparison to all other duties performed by the federal government:

1. Review documented complaints, if any, related to the Section 1332 waiver.
2. Review state reporting.
3. Evaluate the State’s Section 1332 waiver and reinsurance program.
4. Calculate and facilitate the transfer of pass-through funds.
5. Allow the use of the EDGE server to calculate reinsurance payments.

Comment Period

Delaware’s public comment period for its Section 1332 waiver extension application begins on Tuesday, March 12, 2024. Comments can be sent to the Department of Insurance through an e-mail address at 1332waiver@delaware.gov or by mail to:

Delaware Department of Insurance
 Attn: Legal Department
 1351 W. North St. Suite 101
 Dover, DE 19904

A public hearing will also be held:

Thursday, March 21, 2024, at 10:00 am
Delaware Department of Insurance
1351 W. North St. Suite 101
Dover, DE 19904