

HEALTH CARE LANDSCAPE

November 2018

Policy Brief: 1332 State Innovation Waivers

On Jan. 1, 2017, State Innovation Waivers (also known as 1332 waivers) became available for use by states as a mechanism for waiving certain provisions of the Affordable Care Act (ACA). These waivers, authorized by Section 1332 of the ACA and overseen by the secretaries of Health and Human Services (HHS) and the Treasury, give states broad flexibility to restructure and customize their individual health insurance markets for up to five years at a time.[1]

In March 2017, HHS sent letters to state governors encouraging them to take advantage of 1332 waivers, particularly those that would implement high-risk pools[2] or reinsurance[3] programs in order to "lower premiums for consumers, improve market stability, and increase consumer choice."[4] The HHS letter also highlighted the ability of states to collect pass-through funding if their 1332 waiver program results in reductions to federal Marketplace spending.

In response, a number of states, including Alaska, Minnesota, Oregon, Maine, Maryland, New Jersey, and Wisconsin, have submitted and received federal approval for 1332 waivers that create reinsurance programs. In addition, Hawaii has an approved 1332 waiver and Vermont has a pending 1332 waiver application; both states seek to use their waivers for programs other than reinsurance.[1] Most recently, HHS and the Treasury Department issued new guidance giving states even more flexibility to restructure their individual markets through these waivers.[5]

Which ACA requirements can 1332 waivers alter?

- Essential health benefits
- Community rating
- Marketplace metal tiers of coverage
- Premium tax credits
- Cost-sharing reduction subsidies
- Marketplace structure

This brief provides an overview of 1332 waivers, state examples of 1332 waivers to support reinsurance programs, information on other 1332 waivers, and future implications for states.

Section 1332 Waiver Basics

Section 1332 waivers allow states to alter key ACA individual health insurance market requirements, so long as the proposed innovation makes available insurance coverage that is at least as comprehensive and affordable as would have been available without a waiver, is available to a comparable number of state residents, and is cost-neutral to the federal government. Moreover, among other requirements, the waiver application must include:

- Supporting state legislation providing the state authority to implement the proposed waiver (can be satisfied with general legislation for ACA

[1] The Center for Consumer Information and Insurance Oversight. (2018). Section 1332: State Innovation Waivers. Retrieved from https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html.

[2] High-risk pools — safety net health insurance coverage programs for individuals with costly or chronic pre-existing health conditions that are subsidized by state governments.

[3] Reinsurance — insurance coverage purchased by insurance companies from other insurance companies to lower their own risk by limiting the total loss they would have originally experienced. By spreading risk to a third party, a company can insure persons whose coverage would otherwise be too great of a burden for the single insurance company to handle alone.

[4] The Secretary of Health and Human Services. (2017). Letter to Governors. Retrieved from https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter_508.pdf.

[5] U.S. departments of the Treasury and Health and Human Services (2018). State Relief and Empowerment Waivers: Guidance. 83 FR 53575. Available at https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers.

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implementation combined with an executive order authorizing a 1332 waiver application)
- The provisions of the ACA that the state seeks to waive
- The rationale for the specific requests
- An analysis of the impact of the waiver on health insurance coverage in the state
- A detailed plan as to how the state will implement the waiver, including a timeline[1,5]

1332 Waivers For Insurance

Alaska's experience serves as an example for states that seek to use 1332 waivers to support reinsurance programs and stabilize their health insurance markets. In 2016, after Alaska's Marketplace was left with only one health insurer, the state sought a way to keep that insurer from exiting the market or significantly raising premiums.[6] The state created the Alaska Reinsurance Program (ARP; operational since January 2017), which helped to cover the cost of claims in the individual market for people with one or more of 33 identified high-cost conditions, including cystic fibrosis, HIV/AIDS, and multiple sclerosis. Due to the ARP, Alaska's Marketplace stabilized and 2017 rates were only 7.3% higher than rates in 2016.[7]

In July 2017, the federal government approved Alaska's use of a 1332 waiver to support the ARP. Alaska's 1332 waiver sets aside the ACA's community rating requirement that all individual market enrollees be part of a single risk pool (ACA § 1312(c)(1)) and makes substantial funding changes to the program.[8] Prior to the waiver, Alaska funded the ARP through a $55 million one-year appropriation from fees collected on insurance plans. Under the approved 1332 waiver, the federal government has agreed to commit an estimated $48 million in pass-through funding to the ARP in 2018 and $323 million in estimated total funding through 2022.[9] This federal assistance will fund more than 80% of the ARP, while the state retains responsibility for the remaining cost.[10] As a result of the waiver approval, Alaska will be able to offset a large portion of state costs for the ARP and provide sustainable funding for the program.

Alaska's 1332 Waiver Highlights

- Approved July 11, 2017
- Waives ACA § 1312(c)(1) community rating and single risk-pool requirements
- Supports state-run reinsurance program
- Uses federal pass-through dollars to fund 80% of reinsurance program costs
- Uses state insurance tax to fund the remaining 20% of program costs

Other states have sought to replicate the success of Alaska's modified insurance market and are following suit with their own 1332 waiver applications. Minnesota and Oregon, for example, have both received approval for 1332 waivers, seeking to set aside the community-rating provisions of the ACA (§ 1312 (c)(1)). These states are now using federal funds to support their respective state-run reinsurance programs: the Minnesota Premium Security Plan[11] and the Oregon Reinsurance Program.[12] Minnesota sought its 1332 waiver because it has had to find a way to address the loss of its most popular Marketplace insurer, while concurrently experiencing premium rate increases of approximately 67% for 2017 in spite of having four issuers offering plans.[13, 14] Oregon, however, will maintain at least two issuers in most counties for the 2018 plan year, and due to its reinsurance program, has experienced only modest premium rate increases.[15] Maine, Maryland, New Jersey, and Wisconsin received approval for similar reinsurance programs in 2018. Although California and Oklahoma submitted 1332 waiver applications for reinsurance, they later withdrew them.[1]

Other 1332 Waivers

Section 1332 waivers can be used for more than funding reinsurance programs. Hawaii has a 1332 waiver that was approved in 2016 and waives the ACA requirement that the state operate a Small Business Health Options Program (SHOP) exchange in order for the state to maintain its employer coverage requirements that predated the ACA and require more generous benefits. The waiver qualifies Hawaii for an estimated $259,000 in federal pass-through funding in 2017 and total estimated pass-through funding for years 2017 to 2021 of $2.8 million. Vermont requested a similar waiver from the SHOP requirements in March 2016, but their application is incomplete. Massachusetts submitted a waiver request in September that would replace the ACA's CSR federal subsidy requirements with a state-based premium stabilization fund that would be used to make similar payments to insurers. Pass-through funding for 2018 is

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[6] Klouda, N. (2017, July 12). State granted waiver to continue reinsurance program. Alaska Journal. Retrieved from http://www.alaskajournal.com/2017-07-11/state-granted-waiver-continue-reinsurance- program#.WdUB1FtSzX6.

[7] Howard, H., & Meuse, D. (2017). How states are addressing uncertainty with 1332 waivers. Health Affairs. Retrieved from http://healthaffairs.org/blog/2017/06/09/how-states-are-addressing-uncertainty-with-1332-waivers/.

[8] Centers for Medicare and Medicaid Services. (2017, July 7). Alaska 1332 Waiver Approval. Retrieved from https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Approval-Letter.pdf.

[9] Bradner, T. (2017, April 5). Insurance officials hope federal waiver will cover reinsurance costs. Alaska Journal. Retrieved from www.alaskajournal.com/2017-04-05/insurance-officials-hope-federal-waiver-will-cover-reinsurance-costs#.WaRhWLJ96Uk.

[10] Ario, J., & Finkelstein, A. (2017). 1332 Edition: Alaska Reinsurance Proposal Approved by Federal Government. Retrieved from https://www.manatt.com/Insights/Newsletters/Manatt-on-Health/1332-Edition-Alaska-Reinsurance-Proposal-Approved.

estimated at $143 million to $146 million. Finally, Ohio submitted a 1332 waiver application in March 2018 to have the individual and employer mandates waived. Ohio reasons that Congress has already "zeroed out" the penalty associated with the individual and employer mandates, but it did not eliminate them. Massachusetts' and Ohio's applications are also incomplete. Details for all active state waiver requests and their statuses are listed in the table at the end of this document.[1]

Although Iowa's application for a 1332 waiver was withdrawn in October 2017, it is worth noting because it pushed the boundaries further than the applications previously discussed.[1] After three out of four insurers exited Iowa's Marketplace for 2018, and rates were predicted to rise an average of 43.5%,[16] Iowa's insurance commissioner submitted a 1332 waiver request to HHS for a one-year waiver from a number of ACA rules in order to implement a reinsurance program and stopgap insurance plan. The stopgap plan, a single plan for the remaining Marketplace insurer to offer, would have been the equivalent to a silver-level plan covering all ACA essential health benefits and Iowa state–mandated benefits. However, cost-sharing reduction subsidies would have been eliminated, and premium subsidies would have been flat monthly credits, paid directly to the insurer, based on age and 2017 income with no variations for insurance cost. Before Iowa withdrew its application, it had proposed to use the money that the federal government would have spent on premium subsidies and cost-sharing reductions to fund the premium subsidies for the stopgap plan and reinsurance programs. However, HHS did not have the authority to allow states to design their own premium subsidy programs. Additionally, a number of basic 1332 waiver proposal requirements, such as prior public input, actuarial analyses, and specific supportive state legislation, were notably absent from their proposal.[17]

Looking Forward

On Oct. 22, 2018, the departments of the Treasury and Health and Human Services issued new guidance for states that apply for 1332 waivers. The guidance is not a new law or regulation, but a statement of the approach that the departments will take in determining whether or not to approve 1332 waivers. It is effective immediately and provides more flexibility than that given by the previous administration in its 2015 guidance. In the introduction to the new guidance, the departments express their desire to give states more tools to implement innovative changes and improvements in their private health insurance markets. This flexibility is centered on five principles that all waiver applications should seek to advance:

- Provide increased access to affordable private market coverage
- Encourage sustainable spending growth
- Foster state innovation
- Support and empower those in need
- Promote consumer-driven health care

Furthermore, the departments emphasize that they intend to give states maximum flexibility within the bounds of the law to advance these principles. For example, states no longer have to show that the same number of people will have insurance coverage with the waiver as would have had coverage without it; they only have to show that coverage would be available to the same number of people. In addition, when considering the affordability of available coverage with and without the waiver, states can consider all private options available, including short-term and limited benefit plans; previously, only plans that conformed to the ACA's essential health benefits requirements could be considered. Finally, the guidance gives states several options for showing legislative approval of their 1332 waiver application. States no longer have to show that their legislature passed a law specifically authorizing the 1332 waiver application. Now legislation allowing for general implementation of the ACA can be used if combined with an executive order for the 1332 waiver.[5]

This new guidance should make it easier for states to submit 1332 waivers for private market innovations that go beyond reinsurance programs and make significant changes to the ACA's requirements for individual markets, such as Iowa attempted to do in its withdrawn application. Over the next few months, there may be an increase in 1332 waiver applications, as states seek to take advantage of this flexibility to design new approaches that might not have been approved in the past. The Georgia Health Policy Center will monitor these applications and provide updates as appropriate.

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[11] Centers for Medicare and Medicaid Services. (2017, September 22). Minnesota 1332 Waiver Approval. Retrieved from http://mn.gov/commerce-stat/pdfs/1132-waiver-approval.pdf.

[12] Oregon Department of Consumer and Business Services. (2017, August 31). 1332 Waiver Application. Retrieved from http://healthcare.oregon.gov/Documents/1332-application.pdf.

[13] Frost, E. (2017, July 31) Minnesota's health insurance rates set to stabilize for 2018. Minnesota Public Radio News. Retrieved from www.mprnews.org/story/2017/07/31/shoppers-get-first-glimpse-insurance-rates.

[14] Blewett, L. (2017). How Minnesota is stepping up to preserve its individual market. Health Affairs. Retrieved from www.healthaffairs.org/blog/2017/04/18/how-minnesota-is-stepping-up-to-preserve-its-individual-market/.

[15] Oregon Division of Financial Regulation. (2017, July 20). DCBS posts final rate decisions for 2018 health plans. Retrieved from http://dfr.oregon.gov/news/Pages/20170720-2018-final-rates.aspx.

[16] Leys, T. (2017, June 19). Medica intends to stay in Iowa's health-insurance market, at 43% higher price. The Des Moines Register. Retrieved from http://www.desmoinesregister.com/story/news/health/2017/06/19/medica-intends-stay-iowas-health-insurance-market-43-higher-price/408694001/.

[17] Iowa Insurance Division. (2017, June 12). The State of Iowa's Proposed Stopgap Measure for the Individual Health Insurance Market. Retrieved from https://iid.iowa.gov/sites/default/files/state_of_iowa_proposed_stopgap_measure_6.12.2017.pdf.

Table 1. Active 1332 Waiver Applications (as of Oct. 1, 2018)

State	ACA Provisions Waived	Main Objectives	Submitted	Status as of 10/1/18
AK	Individual market rating requirements (community rating, single risk pool)	• Create Marketplace reinsurance program • Funded with combination of federal pass-through funds and state appropriations	12/29/16	Approved 7/7/17
HI	SHOP exchange requirements	• Retain employer coverage provisions in state law, which requires more generous coverage than the ACA	8/10/16	Approved 12/30/16
ME	Individual market rating requirements (community rating, single risk pool)	• Create Marketplace reinsurance program • Funded with combination of federal pass-through funds and state appropriations	5/9/18	Approved 7/30/18
MD	Individual market rating requirements (community rating, single risk pool)	• Create Marketplace reinsurance program • Funded with combination of federal pass-through funds and state appropriations	5/31/18	Approved 8/22/18
MA	Federal CSR subsidy payments to insurance companies	• Create a state-based premium stabilization fund that would make similar payments to insurers	9/8/17	Determined incomplete 10/23/17
MN	Individual market rating requirements (community rating, single risk pool)	• Create Marketplace reinsurance program • Funded with combination of federal pass-through funds and state appropriations	5/5/17	Approved 9/22/17
NJ	Individual market rating requirements (community rating, single risk pool)	• Create Marketplace reinsurance program • Funded with combination of federal pass-through funds and state appropriations	7/2/18	Approved 8/16/18
OH	Seeking to waive the individual and employer mandates	• Although Congress "zeroed out" the penalty associated with the individual and employer mandates, it did not eliminate the requirement	3/30/18	Determined incomplete 5/17/18
OR	Individual market rating requirements (community rating, single risk-pool)	• Create Marketplace reinsurance program • Funded with combination of federal pass-through funds and state appropriations	8/31/17	Approved 10/18/17
VT	SHOP exchange website for enrollment and premium processing	• Allow small employers to enroll directly with health insurance carriers rather than through an online SHOP web portal	3/15/16	Determined incomplete 6/9/16
WI	Individual market rating requirements (community rating, single risk-pool)	• Create Marketplace reinsurance program • Funded with combination of federal pass-through funds and state appropriations	4/18/18	Approved 7/29/18

Source: The Center for Consumer Information and Insurance Oversight. (2018). Section 1332: State Innovation Waivers. Retrieved from https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html.

Tracking Health Reform

The Georgia Health Policy Center (GHPC), has been a neutral source of health policy information and analysis for more than 20 years. GHPC's Health Reform Work Group is composed of faculty and staff from Georgia State University's Andrew Young School of Policy Studies, J. Mack Robinson College of Business, School of Public Health, College of Law, and Rollins School of Public Health at Emory University. Team members have expertise in the areas of health policy, health care administration and finance, economics, insurance, risk management, employee benefits, population health, and health law.

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