



## 1332 State Innovation Waivers

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Section 1332 of the federal Patient Protection and Affordable Care Act (PPACA) allows a state to apply for a state innovation waiver to pursue alternative strategies for providing its residents with access to high-quality, affordable health insurance while still meeting minimum requirements of the PPACA.<sup>1</sup> This *issue brief* discusses recent federal guidance related to 1332 state innovation waivers, the required criteria that must be met for approval of a waiver, the components of federal law that can be waived, the application process for a waiver, the monitoring and review process for an approved waiver, and Colorado's recent 1332 state innovation waiver applications.

### Federal Guidance

In October 2018, the [Centers for Medicare and Medicaid Services](#) (CMS) and the U.S. Department of Treasury published [guidance](#) that provides information about the requirements that must be met for the approval of 1332 innovative waivers, now referred to as State Relief and Empowerment Waivers.<sup>2</sup> This guidance replaces the 2015 CMS guidance related to 1332 waivers. The 2018 guidance sets forth the current administration's goals related to the waivers. The expressed goals are to empower states to innovate in ways that will strengthen their health insurance markets, expand choices of coverage, target public resources to those most in need, and meet the unique circumstances of each state.

### Required Criteria for Approval

Under Section 1332 of the PPACA, four criteria must be met for a State Relief and Empowerment Waiver to be approved:

- the coverage provided must be at least as comprehensive as the coverage required under the essential health benefits outlined in the PPACA and offered through the state health insurance exchange;
- the coverage must be affordable, in that the coverage and cost-sharing protections against excessive out-of-pocket spending are at least as affordable as provided for under the PPACA;
- a comparable number of state residents must have health coverage under the waiver as under the PPACA; and
- the waiver must not increase the federal deficit.

### Permitted Components to be Waived

According to CMS, the following components of federal law can be waived through the implementation of a State Relief and Empowerment Waiver:

- provisions of the PPACA relating to the establishment of qualified health plans;
- provisions of the PPACA relating to consumer choices and insurance competition through health insurance exchanges;
- certain laws relating to premium tax credits and cost-sharing reductions for plans offered within the health insurance exchanges; and
- certain laws relating to the mandates on employers to offer and individuals to maintain health insurance coverage.

<sup>1</sup>42 U.S.C. 18052

<sup>2</sup>83 FR 53575

## Application Requirement

In order to apply for a State Relief and Empowerment Waiver, a state must first pass legislation giving the state the authority to implement the proposed waiver. In certain cases, states may be able to use existing state authority to enforce the PPACA combined with a duly-enacted state regulation or executive order to satisfy this requirement. Additionally, the state must provide a public notice and comment period on the proposed waiver and hold public hearings in accordance with federal rules.

The application must be submitted electronically and sufficiently in advance of the requested effective date to allow time for review and implementation. Some key items to be included in the application are:

- a list of provisions the state seeks to waive, including the rationale for the specific requests;
- data, assumptions, targets, and other information sufficient to determine that the proposed waiver meets the four required criteria outlined previously;
- actuarial analyses and actuarial certifications to support the state's application;
- a detailed analysis of the impact of the waiver on health insurance coverage in the state; and
- a detailed implementation plan and implementation timeline.

Following the determination that a state's application is complete, the U.S. Department of Treasury and CMS must provide for a public notice and comment period on the proposed waiver. The departments must issue a formal decision on the waiver no later than 180 days after the determination that an application is complete. Waivers are approved for five-year periods, and can be renewed.

## Monitoring and Review Requirements

Federal rules require periodic monitoring and review of approved waivers. Specifically, the rules require implementation reviews, federal evaluations, quarterly reports, annual reports, and

periodic evaluations. States must conduct implementation reviews that examine the state process for implementing services under the waiver and include a review of any documented complaints that a state is failing to comply with the waiver requirements. Additionally, states must cooperate with independent evaluations conducted by the federal government of any waiver components.

States must submit quarterly reports to the federal government about ongoing operational challenges and any required corrective actions. States must also submit annual reports that document the progress of the waiver, provide data on compliance with certain provisions of the PPACA, summarize the annual public forums, and offer other information consistent with the state's approved terms and conditions for the waiver. The federal government can periodically evaluate the implementation of the program under the waiver.

## Colorado's 1332 Waiver Applications

The General Assembly recently enacted two bills directing the Division of Insurance (DOI) in the Department of Regulatory Agencies to submit applications for 1332 waivers.

[Senate Bill 18-132](#) directed the DOI to apply for a waiver of the federal law restricting offering catastrophic health plans to residents 30 years of age and older and those not meeting a hardship requirement if an actuarial analysis indicated that there would not be a reduction in the federal subsidies or an increase in average premiums. However, the November 2018 actuarial study indicated that expanding eligibility for catastrophic health plans would likely increase premiums and the federal deficit, thus DOI did not proceed with a waiver application.

[House Bill 19-1168](#) directed DOI to request a waiver of the PPACA requirement for a single risk pool in order to implement a reinsurance program. The waiver application was approved by CMS in July 2019. More information about the reinsurance program may be found [here](#).