



Section 1332 Waivers

What is a Section 1332 Waiver?

In 2010 President Barack Obama signed into law the *Affordable Care Act* (ACA) which created State Innovation Waivers, otherwise known as Section 1332 waivers. These waivers permit states to forgo certain parts of the ACA to implement innovative ways to improve access to high quality, affordable health insurance. The waivers allow states to experiment with different health coverage models to meet the state's needs. Coverage provided through these innovative measures must be (1) at least as comprehensive in covered benefits as federally operated marketplaces, (2) affordable, (3) provide coverage to a comparable number of residents as would be provided coverage absent a waiver, and (4) may not increase the federal deficit. These waivers only apply to the health insurance marketplace and may not be designed to impact other public programs such as Medicare and Medicaid.ⁱ

What Can Be Waived Under Section 1332?

Specific provisions of the ACA and Internal Revenue Code can be waived through State Innovation Waivers, including sections relating to the establishment of qualified health plans, consumer choice and insurance competition through health insurance marketplaces, premium tax credits and cost-sharing reductions for plans offered within marketplaces, employer shared responsibility payments, and individual shared responsibility payments. Examples of permissible adjustments include changing requirements for qualified health plans and bronze, silver, gold, and platinum health insurance marketplace plans; waiving consumer choices such as essential health benefits; and modifying or replacing the insurance marketplaces. States may also change premium tax credits and cost-sharing reductions through a waiver.ⁱⁱ

Approved Waivers

Available to begin on January 1, 2017, so far Alaska, Minnesota, Hawaii, and Oregon have approved State Innovation Waivers. Hawaii was granted a waiver on December 20, 2016 that became effective January 1, 2017. The Hawaii waiver forgoes the ACA provision requiring the state to operate a Small Business Health Options Program (SHOP) in favor of the state's Prepaid Health Care Act, which is Hawaii's existing law regarding employer coverage. The Prepaid Health Care Act requires more generous coverage to be provided than is required under the ACA. The Hawaii 1332 waiver also allows the small business tax credit amounts that would have otherwise been paid to small employers purchasing coverage through SHOP to be provided to the state as pass-through funding. This funding is primarily used to support the state fund that helps small businesses offer health coverage.ⁱⁱⁱ

The Alaska, Minnesota, and Oregon waivers all involved reinsurance programs. For example, the Alaska 1332 waiver which was the first to be approved on July 7, 2017 implements the Alaska Reinsurance Program. This is a state-operated reinsurance plan that covers claims in the individual market for individuals with one or more of 33 identified high-cost conditions. The ACA provision requiring all enrollees in a market to be considered part of a single risk pool is waived to create this program for high-cost individuals. The Alaska Reinsurance Program is designed to help stabilize premiums in the individual insurance market. The state will receive pass-through funding that individuals would have otherwise received as premium tax credits to offset the costs of this program. This waiver will go into effect January 1, 2018.^{iv}

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Other 1332 Waiver Application Activity

California, Vermont, Minnesota, and Iowa have attempted to receive State Innovation Waivers. The California waiver sought to allow undocumented workers to purchase coverage through the state's individual marketplace, Covered California. Premium subsidies or tax credits would not have been provided with coverage; however, following the results of the 2016 presidential election and amid fears that the Trump Administration could use information obtained through this program to deport undocumented immigrants, the waiver application was withdrawn.^v Vermont's waiver is structured to waive the ACA requirement that small employers must enroll through an online SHOP portal but Vermont's waiver application is currently on hold.^{vi}

Iowa applied for a waiver on June 12, 2017 and withdrew the waiver on October 23, 2017. The waiver aimed at stabilizing the state's individual insurance market. The waiver would have created a Proposed Stopgap Measure plan that would be offered in the individual health insurance marketplace, would eliminate cost-sharing subsidies, would implement flat premium subsidies based on age and income in place of advanced premium tax credits, and would establish a reinsurance program. The Iowa application was unique from other reinsurance waivers as it requested both an expedited review of the proposal and an exemption from application process requirements, including data and analysis of the ten-year budget impact. Given the issues Iowa's individual health insurance market is facing, the state requested that if the waiver application were denied, the application be considered as a formal request for emergency regulatory relief permitted by President Trump's Executive Order titled, "Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal".^{vii}

Looking Ahead

Kentucky, Maine, Massachusetts, Ohio, Oklahoma, Rhode Island, and Texas have all passed legislation authorizing the development of 1332 waivers. This would be the first step in the waiver application process and an indication that there will likely be increased state use of innovation waivers in the future.^{viii} The past Department of Health and Human Services Secretary Tom Price was vocal in his support of the state use of waivers and the Department has issued new resources to assist states with application completion. In a [letter](#) to governors, then Secretary Price highlighted the benefits available to states provided by Section 1332 waivers, encouraged states to apply, and committed to reviewing applications on an expedited basis, if possible.^{ix}

ⁱ Centers for Medicare & Medicaid. (2017, July 11). Section 1332: State Innovation Waivers. Retrieved from [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html#Frequently Asked Questions about 1332 State Innovation Waivers](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html#Frequently%20Asked%20Questions%20about%201332%20State%20Innovation%20Waivers)

ⁱⁱ Ibid.

ⁱⁱⁱ Office of the Governor of Hawaii. (2016, August 10). *Hawaii's Proposal to Waive Certain Provision of the Patient Protection of Affordable Care Act*. Honolulu, HI.

^{iv} State of Alaska Department of Commerce, Community, and Economic Development Division of Insurance. (2016, December 30). *Alaska 1332 Waiver Application*. Juneau, AK.

^v Covered California. (2016, September 30). Section 1332 State Innovation Waiver Application: California's Proposal to Waive Affordable Care Act Requirements to Expand Access to Undocumented Individuals. West Sacramento, CA.

^{vi} Department of Vermont Health Access. (2016, March 15). *Vermont's Proposal to Waive Affordable Care Act Requirement to Establish an Internet Portal for the Small Business Health Options Program (SHOP) Per Section 1332, Waivers for State Innovation*. Waterbury, VT.

^{vii} Iowa Insurance Division. (2017, June 12). *The State of Iowa's Proposed Stopgap Measure for the Individual Health Insurance Market*. Des Moines, IA.

^{viii} Cauchi, R. (2017, July 12). State Roles Using 1332 Health Waivers. Retrieved from <http://www.ncsl.org/research/health/state-roles-using-1332-health-waivers.aspx>

^{ix} Price, Thomas E. "March 13 Letter." Received by State Governors, 13 March 2017. Retrieved from https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter_508.pdf