

SECTION 1332 WAIVERS

What is a Section 1332 Waiver?

Section 1332 of the Affordable Care Act (ACA) allows states to waive certain parts of the law to implement innovative ways to improve access to high quality, affordable health insurance. These “State Innovation Waivers” allow states to experiment with different health coverage models to meet the states’ needs. Under the original guidance provided by the Obama administration, coverage provided through these innovative measures had to be (1) at least as comprehensive in covered benefits as federally operated marketplaces, (2) affordable, (3) provided to a comparable number of residents as would be provided absent a waiver, and (4) budget neutral to the federal government. These waivers originally applied to the health insurance marketplace and could not be designed to impact other public programs such as Medicare and Medicaid.

In October 2018, the Trump administration issued new guidance on Section 1332 waivers, renaming them “State Relief and Empowerment Waivers.” The new guidance allows greater flexibility for states to address their individual marketplaces. Notably, the new guidance does not require state proposals to satisfy all the conditions listed above and outlines five new principles guiding whether the federal government would approve waiver applications:

- Increasing access to private market coverage, including association health plans and short term, limited duration health plans.
- Promoting “cost effective” coverage.
- Fostering state innovation.
- Supporting low-income or high-cost populations.
- Promoting consumer-driven health care.

The new guidance allows for significantly less comprehensive coverage, such as association health plans and short term, limited duration health plans, to be covered under the ACA and removes explicit protections for vulnerable populations present in the original guidance. Most notably, the new guidance evaluates proposals on whether individuals have access to affordable, comprehensive coverage, as opposed to mandating this coverage for all individuals, as with the old guidance. This change may make some insurance options cheaper for healthier individuals but may make it less affordable and comprehensive for others, especially for individuals with complicated health conditions.¹

What Can Be Waived Under Section 1332?

Specific provisions of the ACA and Internal Revenue Code can be waived through Section 1332 waivers, including sections relating to the establishment of qualified health plans, consumer choice and insurance competition, 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.

¹ Centers for Medicare and Medicaid. (2018). Section 1332: “State Innovation Waivers.” Web.

Under the new guidance, states are allowed additional flexibility. Unlike under the Obama-era guidance, states no longer must enact legislation to apply for a waiver; rather, they may call on existing legislative authority to submit a Section 1332 waiver for federal approval. States are also able to introduce additional changes to the federal healthcare.gov platform and even change the definition of minimum essential coverage. Given the Trump administration's interpretation of Section 1332 – which some conclude goes beyond the original intent of the statute² -- it's possible that states could submit waivers for approval that would affect the ACA's protections for individuals for pre-existing conditions.

Approved Waivers

Since 2017, seven out of the eight states (AK, ME, MD, MN, NJ, OR, WI) that have received Section 1332 approval have established state-level reinsurance programs to stabilize premiums in the individual insurance market. Alaska's Section 1332 waiver, effective January 2018, established a state-operated reinsurance plan covering claims in the individual market for individuals with one or more of 33 identified high-cost conditions. The state receives pass-through funding that individuals would have otherwise received as premium tax credits to offset the costs of this program.³

Hawaii's non-reinsurance-related waiver, enacted in January 2017, 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. This law requires more generous coverage than is required under the ACA and 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 to support small businesses offering health coverage.⁴

Other 1332 Waiver Application Activity

Several states, including California, Iowa, and Oklahoma, submitted Section 1332 waivers before ultimately withdrawing them. The California waiver sought to allow undocumented workers to purchase coverage through the state's individual marketplace; however, shifting political realities following the 2016 election caused the state to withdraw the waiver request.⁵ Delays from CMS led both Oklahoma and Iowa to withdraw their waiver requests to establish reinsurance programs.^{6,7}

Waivers submitted by Massachusetts, Ohio, and Vermont have been deemed incomplete by CMS. Massachusetts' waiver proposal to waive acceptance of cost-sharing reduction payments to low-income individuals in favor of a reinsurance program was submitted too close to 2018 open enrollment. Ohio's waiver to eliminate the ACA's individual mandate did not include a plan to offer coverage meeting Obama administration guidance. Vermont's request to waive the ACA requirement that small employers must enroll through an online SHOP portal was also deemed incomplete; the issue is now obsolete as states are no longer required to operate an online SHOP portal.⁸

Looking Ahead

Given the additional flexibility allowed by the Trump administration's Section 1332 guidance, as well as streamlined ways for states to apply for the waivers generally, there will likely be increased state use of innovation waivers in the future.⁹ Because legislative efforts to repeal the ACA failed in 2017, states may turn to the Section 1332 waiver process as an alternative way to opt-out of the law's mandates and patient reforms. In a [letter](#) to the Departments of Health and Human Services and Treasury, the AAFP expressed concerns that the new guidance could increase costs and lead to less comprehensive coverage, especially for vulnerable patients.

² Keith K. (2018). "Feds Dramatically Relax Section 1332 Waiver Guardrails." *Health Affairs*. Web.

³ State of Alaska Department of Commerce, Community, and Economic Development Division of Insurance. (2016). "Alaska 1332 Waiver Application." Web.

⁴ Office of the Governor of Hawaii. (2016). "Hawaii's Proposal to Waive Certain Provision of the Patient Protection of Affordable Care Act." Web.

⁵ Covered California. (2016). Section 1332 State Innovation Waiver Application: California's Proposal to Waive Affordable Care Act Requirements to Expand Access to Undocumented Individuals. Web.

⁶ Oklahoma State Department of Health. (2017). "Oklahoma 1332 State Innovation Waiver." Web.

⁷ Meyer H. (2017). "Iowa withdraws request to establish alternative insurance model." *Modern Healthcare*. Web.

⁸ Kaiser Family Foundation. (2019). "Tracking Section 1332 State Innovation Waivers." Web.

⁹ Keith K. (2018). "Feds Dramatically Relax Section 1332 Waiver Guardrails." *Health Affairs*. Web.