



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 innovative strategies for providing its residents with access to high-quality, affordable health insurance while still retaining certain elements of the PPACA. This issue brief outlines the required components of a 1332 state innovation waiver, elements of federal law that can be waived, the application process for a waiver, and the monitoring and review process for an approved waiver.

Required Components

Under Section 1332 of the PPACA, four criteria must be met for a 1332 state innovation 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 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 Waivers

According to Centers for Medicare and Medicaid Services (CMS), the following components of federal law can be waived pursuant to a 1332 state innovation 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.

Section 1332 of the PPACA does not change existing Medicaid or Medicare waiver authority. However, states may apply for certain waivers as part of the coordinated application process. States may apply for a CMS innovation waiver under a coordinated application, which allows for testing of innovative payment and service delivery models to reduce program expenditures, while preserving or enhancing the quality of care. A Medicaid and the Children's Health Insurance Program demonstration waiver may also be part of a coordinated waiver, which can be used for many purposes, such as: expanding coverage; changing delivery systems; altering benefits and cost sharing; modifying provider

payments; and quickly extending coverage during an emergency.

Application Requirement

In order to file an application for a 1332 state innovation waiver, a state must pass legislation giving the state the authority to implement the proposed waiver. Additionally, the state must provide a public notice and comment period on the proposed waiver. In meeting this requirement, public hearings must be conducted in accordance with federal rules.

The application must be submitted electronically and sufficiently in advance of the requested effective date to allow for an appropriate implementation timeline. The Secretary of the Treasury and the Secretary of Health and Human Services must complete a preliminary review of the application within 45 days after it is submitted to determine if the application is complete. Even if a preliminary determination is made that the application is complete, during the final review process it can be determined that necessary elements of the application are missing or insufficient. The 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 ten-year budget plan that is deficit neutral to the federal government;
- a detailed analysis of the impact of the waiver on health insurance coverage in the state;
- a description and copy of the enacted state legislation providing the state authority to implement the proposed waiver; and
- a detailed implementation plan and implementation timeline.

Following the preliminary determination that a state's application is complete, the Department of Treasury and Department of Health and Human Services must provide for a

public notice and comment period on the proposed waiver. The Secretary of the Treasury and the Secretary of Health and Human Services must issue a formal decision no later than 180 days after the determination that an application is complete. If approved, the waiver can begin on or after January 1, 2017. The 1332 state innovation waivers are approved for five-year periods, and can be renewed.

Monitoring and Review Requirements

Federal rules regarding 1332 state innovation waivers require periodic monitoring and review of approved waivers. Specifically, the rules require implementation reviews, federal evaluations, quarterly reports, annual reports, and periodic evaluations.

Implementation reviews 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. Within six months after the implementation date of the waiver and annually thereafter, a state must hold a public forum to solicit comments on the progress of the waiver. The federal government reserves the right to suspend or terminate a section of the waiver, in whole or in part, at any time before the waiver's expiration date. Additionally, states must cooperate with independent evaluations conducted by the federal government of any waiver components.

Federal rules require states to submit quarterly reports to the federal government about ongoing operational challenges and any required corrective actions. States must also submit annual reports to the federal government 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. Finally, the federal government can periodically evaluate the implementation of the program under the waiver.