

Checklist for Section 1332 State Innovation Waiver Applications, including specific items applicable to High-Risk Pool/State-Operated Reinsurance Program Applications

Introduction: Section 1332 of the Affordable Care Act (ACA) permits a state to apply for a State Innovation Waiver (Section 1332 waiver) to pursue innovative strategies for providing their residents with access to high quality, affordable health coverage.¹

To receive approval for a Section 1332 waiver, the state must demonstrate that the waiver will provide access to quality health care that is at least as comprehensive and affordable as would be provided without the waiver, will provide coverage to at least a comparable number of residents of the state as would be provided coverage without a waiver, and will not increase the federal deficit. Before submitting its Section 1332 waiver application, the state must also provide a public notice and comment period, including public hearings, sufficient to ensure a meaningful level of public input, and enact a law providing for implementation of the waiver. Under a Section 1332 waiver, a state may receive pass-through funding associated with the resulting reductions in federal spending on Marketplace financial assistance consistent with the statute.

The Department of Health and Human Services and the Department of Treasury (the Departments) are interested in working with states on Section 1332 waivers that would lower premiums for consumers, improve market stability, and increase consumer choice. In particular we welcome the opportunity to work with states to pursue Section 1332 waivers incorporating a high-risk pool/state-operated reinsurance program. State-operated reinsurance programs have a demonstrated ability to help lower premiums, and if the state shows a reduction in federal spending on premium tax credits a state could receive Federal pass-through funding to help fund the state's reinsurance program.

Checklist: This checklist is intended to help states pursuing Section 1332 waivers as they develop and complete the required elements of the application. In completing a Section 1332 waiver application, states are asked to submit the items described below. More information can be found in regulations² and guidance³. We encourage states interested in applying for Section 1332 Waivers to reach out to the Departments promptly for assistance in formulating an approach that meets the requirements of Section 1332. If you have further questions please contact StateInnovationWaivers@cms.hhs.gov.

¹ Provisions that may be waived include the following: Part I of Subtitle D of Title I of the Affordable Care Act (relating to establishing qualified health plans (QHPs)); Part II of Subtitle D of Title I of the ACA (relating to consumer choices and insurance competition through health insurance marketplaces); Sections 36B of the Internal Revenue Code and 1402 of the ACA (relating to premium tax credits and cost-sharing reductions for plans offered within the marketplaces); Section 4980H of the Internal Revenue Code (relating to employer shared responsibility); and Section 5000A of the Internal Revenue Code (relating to individual shared responsibility).

² <https://www.gpo.gov/fdsys/pkg/FR-2012-02-27/pdf/2012-4395.pdf>

³ <https://www.federalregister.gov/documents/2015/12/16/2015-31563/waivers-for-state-innovation>

	HHS Citation and Description	Comments
1	<p>45 CFR 155. 1308(a),(b), (c), (d)</p> <p>Submit application States should submit application with enough time to allow for an appropriate implementation timeline</p>	<p>E-mail applications to StateInnovationWaivers@cms.hhs.gov.</p> <p>Note that HHS/Treasury will conduct a preliminary review of the application for completeness within 45 days of receipt of the application. The final decision of HHS/Treasury will be issued no later than 180 days after the application completeness determination is made.</p>
2	<p>45 CFR 155.1308(f)(2)</p> <p>Written evidence of the State’s compliance with the public notice and comment requirements, set forth in 45 CFR 155.1312.</p>	<p>Include:</p> <ol style="list-style-type: none"> 1. A copy of the web page and/or notice that was posted. The notice must include a comprehensive description of the Section 1332 waiver application, where the application is available, how to submit written comments, and the timeframe to submit comments (minimum of 30 days). The notice should include the location, date, and time of public hearings. 2. Report on the issues raised during the public comment process.
	<p>Public Hearings</p>	<p>Include:</p> <ol style="list-style-type: none"> 1. Evidence that a minimum of 2 public hearings were convened on separate dates and locations (i.e., notice or agenda). 2. Report on the issues raised during public hearings.
	<p>Tribal Consultation and evidence of meaningful consultation (if the state has one or more Federally-recognized Indian tribes)</p>	<p>Include:</p> <ol style="list-style-type: none"> 1. Evidence of an official meeting between the state and Tribal representatives. 2. Report of the issues raised during official meeting.

3	<p>45 CFR 155.1308(f)(3)(i), (ii)</p> <p>Comprehensive description of State’s enacted legislation and program to implement a plan meeting the requirements for a Section 1332 waiver and a copy of the state’s enacted legislation</p>	<p>Include legislation establishing authority to pursue a Section 1332 waiver and/or for the program to implement a state plan for a waiver.</p> <p><i>If submitting a Section 1332 waiver application implementing a high-risk pool/state-operated reinsurance program and seeking a pass through of funding, the legislation must provide that the high-risk pool/state-operated reinsurance program is contingent upon federal approval of the waiver (or become effective only if the Section 1332 waiver is approved). This could be accomplished by making appropriations or funding for the program or the authorization for the reinsurance program contingent on approval of the Section 1332 waiver, or by otherwise structuring the legislation so that the program cannot operate without an approved Section 1332 waiver in place.</i></p>
4	<p>45 CFR 155.1308(f)(3)(iii)</p> <p>List of provision(s) of the law that the state seeks to waive and reason for the specific request(s).</p>	<p>Include a description of the provision the seeking to be waived and how it will facilitate the state’s plan.⁴</p> <p>If the state is seeking pass-through funding, include an explanation of how, due to the structure of the state plan, the state anticipates that individuals would not qualify for premium tax credits, small business tax credits, or cost-sharing reductions for which they would otherwise be eligible. Also explain how the state plans to use that funding.</p> <p><i>For a high-risk pool/state-operated reinsurance Section 1332 Waiver a state should request a waiver of one or more related provisions of the ACA⁵ and explain how that will facilitate the state’s plan to implement a state-operated reinsurance program for</i></p>

⁴ Per ACA Section 1332, these provisions include: Part I of Subtitle D of Title I of the Affordable Care Act (relating to establishing qualified health plans (QHPs)); Part II of Subtitle D of Title I of the ACA (relating to consumer choices and insurance competition through health insurance marketplaces); Sections 36B of the Internal Revenue Code and 1402 of the ACA (relating to premium tax credits and cost-sharing reductions for plans offered within the marketplaces); Section 4980H of the Internal Revenue Code (relating to employer shared responsibility); and Section 5000A of the Internal Revenue Code (relating to individual shared responsibility).

⁵ For example, a state could waive Section 1312(c)(1) related to the individual market single risk pool in connection with implementation of a state-operated reinsurance program. Section 1312(c)(1) requires a health insurance issuer to consider “all enrollees in all health plans....offered by such issuer in the individual market...to be members of a single risk pool.” In its waiver application, the State would be required to explain how waiver of the single risk pool provision would facilitate the operations of and/or requirements for participation in the State’s reinsurance program or high risk pool and/or mechanism for a high risk pool in its individual insurance market in terms of its decision to implement its reinsurance program. For example, a state might explain how in order to maximize the rate-lowering impact of their proposal, the state would like to waive the single risk pool provision at 45 CFR 156.80 to the extent it would otherwise require excluding total expected state reinsurance payments when establishing the market wide index rate.

		<p>2018 and/or future years. The state should further explain how the provision(s) of the ACA that the state is seeking to waive are connected to and/or relate to the state’s plan for a reinsurance program. The state should also state how the high-risk pool/state-operated reinsurance program would result in a reduction in federal spending on premium tax credits, if the state expects to receive pass-through funding, and how the state wants to use that funding to implement the state plan under the Section 1332 waiver.</p>
5	<p>45 CFR 155.1308(f)(4)(i)-(iii)</p> <p>Actuarial analyses and actuarial certifications</p> <p>Economic analyses</p> <p>Data and assumptions</p> <p><i>*Note a state can combine the elements of an actuarial analysis and economic analysis into one report or submit separate actuarial and economic reports.</i></p>	<p>Include:</p> <ol style="list-style-type: none"> 1) An actuarial analysis and certification to support the state’s finding that the waiver complies with the coverage, comprehensiveness, and affordability requirements in each year of the waiver. 2) An economic analysis to support the state’s finding that the waiver will not increase the federal deficit over the five-year waiver period or in total over the ten-year budget period. 3) The data and assumptions that the state relied upon to determine the effect of the waiver on coverage, comprehensiveness, affordability and deficit neutrality requirements. <p>The actuarial and economic analyses must compare coverage, comprehensiveness, affordability and net Federal spending and revenues under the waiver to those measures absent the waiver (the baseline) for each year of the waiver.</p> <p>The deficit analysis should show yearly changes in the federal deficit (that is, revenues less spending) due to the waiver. It should include a description of all costs associated with the program, including federal administrative costs, foregone tax collections, and any other costs that the federal government might incur.</p> <p>For states considering establishing a <i>high-risk pool/state-operated reinsurance Section 1332 waiver</i>, the state should use a baseline in which there is no state or federal funding for a state reinsurance program, and should compare premiums and coverage under the baseline for each year to those projected under the waiver (i.e. with a reinsurance program with funding). Data used to produce these projections might</p>

		<p>include overall and Second Lowest Cost Premium (SLCSP) and enrollment information for a recent plan year. The actuarial and/or economic analyses must include:</p> <ul style="list-style-type: none"> • A comprehensive description of the parameters of the reinsurance arrangement, including projected funding levels. • A projection of the following items separately under both a ‘without-waiver’ scenario and a ‘with-waiver’ scenario: <ul style="list-style-type: none"> • Number of non-group market enrollees by income as a share of FPL (0% - 99%, ≥100% to ≤150%, >150% to ≤200%, >200% to ≤250%, >250% to ≤300%, >300%- ≤400%, and greater than 400% of FPL), by PTC-eligibility, and by plan. • Overall average non-group market premium rate. • Second Lowest Cost Silver Plan rate for a representative consumer (e.g., a 21-year old non-smoker), by rating area. • Aggregate premiums and PTC amounts. • Aggregate shared responsibility payments, health insurance provider fee, and exchange user fee for FFE or SBE-FP states. • Documentation of the assumptions and methodology used in the projections. <p>Additional information may be required to facilitate evaluation of state estimates and calculation of pass-through amounts by the Departments.</p>
6	<p>45 CFR 155.1308(f)(4)(iv)</p> <p>Draft timeline for implementation of the proposed waiver</p>	<p>Include a timeline and discussion of implementation of the waiver plan. <i>If applicable</i>, include an explanation as to how the state will provide the federal government with all information necessary to administer the waiver at the federal level.</p> <p>If a <i>high-risk pool/state-operated reinsurance program Section 1332 waiver</i>, <u>include</u>:</p> <ol style="list-style-type: none"> 1. How the state will implement a reinsurance program. 2. The data collection timing and mechanism for collecting claims information and generally for pay-out. 3. Whether the state is using conditions-based list for reinsurance and/or an attachment point model. 4. Whether the reinsurance program includes incentives for providers, enrollees, and plan issuers to continue managing health care cost and utilization for individuals eligible for the described reinsurance (if any).

		<ol style="list-style-type: none"> 5. Whether the state is specifying a co-insurance amount, or a cap, based on available funds, similar to the federal program. 6. Any legislation and/or regulations related to the state reinsurance program.
7	<p>45 CFR 155.1308(f)(4)(v)(A)(B)(C)(D) and (E)</p> <p>Additional Information</p>	<p>Additional Information that is pertinent to your waiver plan. This may include:</p> <ol style="list-style-type: none"> 1) Explanation of whether the waiver increases or decreases the administrative burden on individuals, insurers, or employers. 2) Explanation of whether the waiver will affect the implementation of ACA provisions which are not being waived. <ul style="list-style-type: none"> Note: The state should identify if any section of the ACA would be adversely affected by the proposed waiver. 3) Explanation of how the waiver will affect residents who need to obtain health care services out of the state. <ul style="list-style-type: none"> Please include whether the state health plans provide for coverage out of state. 4) If applicable, an explanation as to how the state will provide the Federal government with all information necessary to administer the waiver at the Federal level. 5) Explanation of how the state’s proposal will address potential compliance, waste, fraud, and abuse.
8	<p>45 CFR 155.1308(f)(4)(vi)</p> <p>State’s suggested reporting targets for the four statutory requirements</p>	<p>States must propose a plan for quarterly and/or annual reporting of data to demonstrate that the waiver remains in compliance with the scope of coverage, affordability, comprehensiveness and deficit requirements. For example, a state might meet this requirement by proposing to continue to report the same data used to support the application findings as required under 45 CFR 155.1308(f)(4).</p> <p>For comprehensiveness, if there is no change to the provision of the ten Essential Health Benefits (EHB) identified in the benchmark plan, the state can indicate that it will report on any modifications from federal or state law on an annual basis.</p> <p>For a <i>high-risk pool/state-operated reinsurance program Section 1332 waiver</i>, the state must provide each year the actual Second Lowest Cost Silver Plan premium under the waiver and an estimate of the premium as it would have been without the waiver, for a</p>

		representative consumer in each rating area. Coverage and affordability metrics may be also reported on an annual basis.
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