

Updates on Recent State Waiver Activity

States may seek approval from CMS to waive certain federal requirements in order to test new or different models for administering or implementing their Medicaid, CHIP and Health Insurance Marketplace programs. The waivers that are most often relevant for health centers and their patients are Section 1115 (used to waive certain Medicaid requirements) and Section 1332 (used to waive certain Marketplace requirements) waivers. Both types of waivers are subject to several procedural requirements, such as the opportunity for public comment at the state and federal levels and, in the case of 1332 waivers, the enactment of enabling state legislation. See NACHC’s Fact Sheet on *State Waiver Options* [here](#).

Section 1332 Affordable Care Act Waivers (as of September 5, 2018):

A Section 1332 waiver (also known as “State Innovation Waivers”), allows states to seek federal approval to waive Affordable Care Act (ACA) provisions related to the Health Insurance Marketplaces and the individual and employer mandates. However, these waivers cannot be used to waive the basic protections of the ACA (e.g., prohibition on lifetime caps, nondiscrimination provisions, and guaranteed access to fair prices for all enrollees). While Section 1332 waivers only focus on private Marketplace insurance, they can be coordinated and submitted in conjunction with other waiver requests from the state.

*Medicaid expansion. ~Medicaid expansion pending.

APPROVED

| State | Summary | Status |
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| Alaska* | HHS and the Department of the Treasury approved Alaska’s application seeking a waiver of Section 1312(c)(1) of the ACA (the single risk pool requirement) in order to increase stability in its individual health insurance marketplace. Alaska will be able to use federal pass-through funding (\$322 million over five years) to partially finance its state-based reinsurance program. The program is designed to reinsure the remaining insurer offering health coverage for people with high-cost diagnoses. The waiver is expected to bring premiums down by 20% and help an additional 1,460 people gain coverage. The state will reimburse insurers for all claims for policyholders with one of the 33 high-cost diagnoses. The term of the waiver is 2018 through 2022. | Approved July 7, 2017 |
| Hawaii* | Hawaii received approval to waive the small business health options program requirements of the ACA which conflicted with the state’s longstanding Prepaid Health Care Act. The state’s law actually required more generous employer sponsored coverage than the ACA. The term of the waiver is 2017 through 2021. | Approved December 30, 2016 |
| Maine~ | Maine’s received approval to reinstate its previous state-based reinsurance program. The reinstated program is expected to bring premiums down by about 9%. The state will reimburse insurers for 90% of claims between \$47,000 and \$77,000 and 100% of claims paid in excess of \$77,000 up to \$1 million. The term of the waiver is 2019 through 2023. | Approved July 30, 2018 |
| Maryland* | Maryland received approval to implement a state-based reinsurance program. In May 2018, when Maryland submitted its application, rates had increased by almost 90% in the state. The state will reimburse insurers for 80% of claims between a to-be-determined attachment point and the \$250,000 cap. The term of the waiver is 2019 through 2023. | Approved August 22, 2018 |

For more information, state@nachc.org.

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| Minnesota* | Minnesota received approval to implement a state-based reinsurance program in 2018. The state will reimburse insurers for claims between the \$50,000 attachment point and the \$250,000 cap. Pass-through funding for the state's Basic Health Plan was not approved. The term of the waiver is 2018 through 2022. | Approved <i>September 22, 2017</i> |
| New Jersey* | New Jersey received approval to implement a state-based reinsurance program. The state will reimburse insurers for 60% of claims between the \$40,000 attachment point and the \$215,000 cap. The term of the waiver is 2019 through 2023. | Approved <i>August 16, 2018</i> |
| Oregon* | Oregon received approval to implement state-based reinsurance program. The state will reimburse insurers 50% of claims between an attachment point (to be determined) and the approximate \$1 million cap. The term of the waiver is 2018 through 2022. | Approved <i>October 18, 2017</i> |
| Wisconsin | Wisconsin received approval to implement state-based reinsurance program. The state's reinsurance program is expected to result in premiums decreasing by approximately 10.6%. The state will reimburse insurers for a percentage of claims (to be determined) between the \$50,000 attachment point and the \$250,000 cap. The term of waiver is 2019 through 2023. | Approved <i>July 29, 2018</i> |

PENDING

| State | Summary | Status |
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| New Hampshire* | Through a 1332 waiver, the state seeks to "promote stability and reduce the likelihood of dramatic rate increases in the individual market" by implementing a state-based reinsurance program. In order to receive the federal funding, the state provided notice that it sought to waive the ACA "pass-through" funding requirements. The public comment period at the state level for the waiver application has closed. | Pending See the state and CMS's websites for updates. |

DENIED

| State | Summary | Status |
|-----------------------|--|--|
| Massachusetts* | The state submitted a waiver application to CMS on September 8, 2017 seeking permission to use federal pass-through funds of cost-sharing payments and advance premium tax credits to fund a premium stabilization program. Citing the rationale of Alaska's 1332 waiver that had been approved, the state posited that their waiver proposal would "eliminate the upward pressure on premiums that would result from CSR payments not being paid, it would reduce premiums and thus federal APTC/PTC spending." | October 2017, CMS deemed the application incomplete noting that there would not be enough time to implement it for the 2018 coverage year. |
| Ohio* | The state submitted a waiver application to CMS on March 30, 2018, proposing to eliminate the individual mandate. | May 2018, CMS deemed the application incomplete and noted that it did not comply with Section 1332 requirements. |