

## **FACT SHEET: State Relief and Empowerment Waiver Guidance**

The Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of the Treasury (collectively, the Departments) have released new guidance related to section 1332 of the Patient Protection and Affordable Care Act (PPACA). This action is being taken so states can increase choice and competition within their insurance market while protecting people with pre-existing conditions.

The new guidance gives states more flexibility to address problems caused by the PPACA and to give Americans more options to get health coverage that better meets their needs. Under this new policy, states will be able to pursue waivers to improve their individual insurance markets, increase affordable coverage options for their residents, and ensure that people with pre-existing conditions are protected. These waivers are now called State Relief and Empowerment Waivers to reflect this new direction and opportunity.

Specifically, the guidance provides information about the requirements that must be met for the approval of these waivers, including the Secretaries' application review procedures, the calculation of pass-through funding, certain analytical requirements, and operational considerations. This new guidance replaces the guidance related to section 1332 of the PPACA that was previously published on December 16, 2015 (80 FR 78131).

In addition, CMS intends to release waiver concepts in the near future to give examples of how states can take advantage of waivers and to spur further state innovations.

### **Guidance**

The Departments are committed to empowering states to innovate in ways that will strengthen their health insurance markets and meet the unique needs of each state. The Departments are releasing this guidance now to enable states to seek innovative ways to improve insurance markets and develop more effective approaches to increase coverage choice and affordability. States can use the information in the guidance as they consider applying for a waiver.

The guidance outlines five principles for states to follow as they work to develop innovative new approaches. Moving forward, state waivers should aim to: provide increased access to affordable private market coverage; encourage sustainable spending growth; foster state innovation; support and empower those in need; and promote consumer-driven healthcare.

The guidance issued today is intended to:

- **Loosen excessive restrictions that limit state flexibility and consumer choice**, while maintaining the requirements of the statute. Under the statute, the Secretaries may grant a waiver only if they determine the application will meet certain guardrails. The 2015 guidance imposed significant restrictions on states in meeting the guardrails beyond what was required by the PPACA.
  - While the 2015 guidance focused on the number of individuals actually estimated to receive comprehensive and affordable coverage, the new

guidance focuses on the *availability* of comprehensive and affordable coverage, to allow states to provide access to health insurance coverage at different price points and benefit levels. This shift in focus ensures that State residents who wish to retain coverage similar to that provided under the PPACA can continue to do so, while permitting a State waiver plan to also provide access to other options that may be better suited to consumer needs and more attractive to many individuals.

- In contrast to the 2015 guidance, this new guidance focuses on the aggregate effects of a waiver rather than to require that the guardrails be met for specific sub-populations. When applying the coverage guardrail, a comparable number of residents must still be covered as would have been covered absent the waiver.
  - This guidance expands the definition of coverage for purposes of this guardrail to include access to more forms of coverage, including short-term plans.
- **Provide flexibility for states to meet the state legislative authority requirement.** States are required under the statute to enact a law providing for implementation of the Waiver. The guidance clarifies that in certain circumstances, existing state legislation that provides statutory authority to enforce PPACA provisions and the state waiver plan, combined with a duly-enacted state regulation or executive order, may satisfy the requirement that the state enact a law.

### **Background**

The Departments urge states to consider this new guidance as an opportunity to develop strategies that best suit their individual needs. Through innovative actions, tailored to specific state circumstances, states can lower premiums for consumers, improve markets, and increase consumer choice.

- Section 1332 of the PPACA permits a state to apply for a Waiver to pursue innovative strategies for providing their residents with access to high quality, affordable health insurance. The Departments may grant a Waiver if a state's waiver plan meets the four statutory requirements (or "guardrails"). The Waiver must:
  - Provide coverage that is at least as comprehensive as would be provided absent the waiver;
  - Provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided absent the Waiver;
  - Provide coverage to at least a comparable number of residents as would be provided absent a Waiver; and
  - Not increase the Federal deficit.
- This section also requires State and Federal public notice and comment periods sufficient to ensure a meaningful level of public input regarding a State's waiver plan. Current regulations and sub-regulatory guidance stipulate how to apply for a waiver and what to include in an application. In 2012, the Departments published [regulations](#) (published at

77 FR 11700) that set forth the process for states to submit applications and describe what an application from a state must contain.

The Departments are committed to empowering states to innovate in ways that will strengthen their health insurance markets and meet the unique needs of every state. We welcome the opportunity to work with states on the State Relief and Empowerment Waivers and welcome comments on all aspects of this guidance.

States may submit State Relief and Empowerment Waiver applications and/or questions to [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

The guidance is available at <https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-23182.pdf> starting October 22, 2018.

For more information, please visit: [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_state\\_Innovation\\_Waivers-.html](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-.html).

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