



# 1332 State Innovation Waivers

A service of Maryland Health Benefit Exchange

- ✦ Request from the Maryland Health Insurance Coverage Protection Commission
- ✦ Reinsurance Overview
- ✦ 1332 Waivers:
  - Overview
  - Application Requirements
  - Other States' Experience

Established by Chapter 17 of the Acts of 2017 (Senate Bill 571) to:

- ✦ Monitor potential and actual federal changes to the Affordable Care Act (ACA), Medicaid, the Maryland Children's Health Program (MCHP), Medicare, and the Maryland All-Payer Model
- ✦ Assess the impact and complete a study of potential and actual federal changes to the ACA, Medicaid, MCHP, Medicare, and the Maryland All-Payer Model
- ✦ Provide recommendations for State and local action to protect access of residents of the State to affordable health coverage

- ✦ Report with findings and recommendations due December 31
- ✦ Next meeting date – September 27
- ✦ Requested information from the MHBE on 1332 waivers in general and specifically about state-operated reinsurance programs

- ✦ The ACA created a transitional reinsurance program to help stabilize premiums for benefit years 2014-2016
  - Maryland supplemented the federal program with state funds in 2015-2016
- ✦ Insurance carriers made contributions to the federal government, which were then distributed to carriers for high-cost enrollees
- ✦ Reinsurance terminology:
  - Attachment point = payment threshold at which point reinsurance payment is made to carriers
  - Cap = upper threshold at which point payments stop being made to carriers
  - Coinsurance rate = % of health care costs for an individual between the threshold and the cap at which payment is made to carriers

Section 1332 of the ACA permits states to apply for State Innovation Waivers.

- ✦ 1332 waivers allow states to pursue innovative strategies for providing their residents with access to high quality, affordable health coverage
- ✦ States may request waivers for provisions in the ACA, but must retain the statute's basic protections
- ✦ Waivers may be approved for periods up to 5 years and can be renewed

The Secretaries of the Department of Health and Human Services (HHS) and the Treasury are authorized to waive standards related to:

- ✦ Qualified health plan establishment (Part I of Subtitle D of Title I of the ACA)
- ✦ Consumer choices and insurance competition through health insurance marketplaces (Part II of Subtitle D of Title I of the ACA)
- ✦ Premium tax credits and cost-sharing reductions for plans offered within the marketplaces (Sections 36B of the IRC and 1402 of the ACA)
- ✦ Employer shared responsibility (Section 4908H of the IRC)
- ✦ Individual shared responsibility (Section 5000A of the IRC)

The state must demonstrate that the waiver meets four statutory requirements:

- ✦ Provides access to quality health care that is *at least as comprehensive* as would be provided without the waiver
- ✦ Provides access to quality health care that is *at least as affordable* as would be provided without the waiver
- ✦ Provides coverage to *at least a comparable number* of residents as would be provided without the waiver
- ✦ *Does not* increase the federal deficit

42 USC § 18052(b)(1)(A)-(D)



States should submit application with enough time to allow for an appropriate implementation timeline.

- ✦ HHS/Treasury will conduct a preliminary review of the application for completeness within 45 days of receipt of the application
- ✦ HHS/Treasury will provide for a public notice and comment period following the preliminary determination of completeness
- ✦ Final decision from HHS/Treasury will be issued no later than 180 days after the application completeness determination is made

States are required to:

- ✦ Give public notice of the application and have a minimum 30 day public comment period
- ✦ Hold a minimum of two public hearings on separate dates and locations
- ✦ Enact a law providing for implementation of the waiver

# Application Process

## Prior to submission:

- Public notice of application and public comment period
- Minimum of two public hearings
- Enact law providing for the implementation of the waiver

State submits application

HHS/Treasury conduct preliminary review for completeness within 45 days

HHS/Treasury provide for a public notice and comment period

Final decision from HHS/Treasury issued no later than 180 days after application is determined complete

States are required to provide:

- ✦ Evidence of public notice and two public hearings
- ✦ Reports on the issues raised during the public comment process and public hearings
- ✦ Comprehensive description and copy of enacted legislation
- ✦ List of provision(s) of the law the state seeks to waive and reason for the specific request(s)
- ✦ Actuarial and economic analyses and actuarial certifications

States are required to provide:

- ✦ Data and assumptions used in the analyses
- ✦ Draft timeline for implementation
- ✦ State's suggested reporting targets for the four statutory requirements
  - Quarterly and/or annual reporting of data

Waivers for a state-operated reinsurance program must:

- ✦ Include legislation that provides that the reinsurance program is contingent upon federal approval of the waiver
- ✦ Explain how waived provisions of the ACA will facilitate the state's plan to implement a reinsurance program
- ✦ Explain how the program would result in a reduction in federal spending on premium tax credits
- ✦ If the state expects to receive pass-through funding, explain how the state would use the funding to implement the program
- ✦ Include a copy of any legislation or regulations related to the program

# Reinsurance Program Application Requirements

States' waiver applications must explain:

- ✦ How the state will implement the program and collect data
- ✦ Whether the state is using a conditions-based list (like Alaska) or an attachment point model (as are Minnesota and Oklahoma)
- ✦ Whether the program includes incentives for providers, enrollees, and plan issuers to continue managing health care cost and utilization
- ✦ Whether the state is specifying a co-insurance amount or a cap

States must provide analyses and certifications that support the state's finding that the waiver complies with these actuarial requirements:

- ✦ Provide coverage to at least a comparable number of the state's residents as would be provided absent the waiver
- ✦ Provide coverage that is at least as comprehensive for the State's residents as would be provided absent the waiver
- ✦ Provide coverage and cost sharing protections against excessive out-of-pocket spending that results in coverage which is at least as affordable for the State's residents as would be provided absent the waiver



States must provide analyses that support the state's finding that the waiver will not increase the federal deficit over the five-year waiver period nor in total over the ten-year budget period.

- ✦ State must compare projected net federal spending and revenues under the waiver to those measures absent the waiver for each year of the waiver
- ✦ Deficit analysis must show yearly changes in the federal deficit due to the waiver

# Reinsurance Program Analyses Requirements

Analyses must include a description of the reinsurance arrangement and projection of the following items with and without the waiver:

- ✦ Number of non-group market enrollees by income as a share of the federal poverty level, by premium tax credit eligibility, and by plan
- ✦ Overall average non-group market premium rate
- ✦ Second Lowest Cost Silver Plan rate for a representative consumer, by rating area
- ✦ Aggregate premiums and premium tax credit amounts
- ✦ Aggregate shared responsibility payments, health insurance provider fee, and exchange user fee

Reinsurance programs must annually report the Second Lowest Cost Silver Plan premium and what it would have been without the waiver, for a representative consumer in each rating area

Seven other states have begun and/or completed the 1332 waiver process.

- ✦ Alaska's and Hawaii's waivers have been approved
- ✦ Oklahoma, Minnesota, and Iowa have submitted applications in 2017
- ✦ Vermont's application is on hold
- ✦ California withdrew its application

Approved to implement the Alaska Reinsurance Program (ARP) through federal savings and state appropriations.

- ✦ Waives the requirement to consider all enrollees in a market to be a part of a single risk pool (Section 1312 (c)(1) of the ACA)
- ✦ The ARP will reinsure individuals with 1 or more of the 33 identified high cost conditions to help stabilize premiums
  - State will receive pass-through funding based on the amount of premium tax credits that would have been paid absent the waiver

Not required to operate a Small Business Health Options Program (SHOP).

- ✦ Waives requirements related to SHOP
- ✦ Hawaii has a long-standing law that requires all employers to offer coverage
- ✦ Allows the small business tax credit amounts to go to the state to support a fund that helps small businesses offer health coverage

Application to implement the Oklahoma Individual Health Insurance Market Stabilization Program (OMSP), which includes a reinsurance program.

- ✦ Proposal to waive the requirement to consider all enrollees in a market to be a part of a single risk pool (Section 1312 (c)(1) of the ACA)
- ✦ State wishes to receive pass-through funding based on the amount of premium tax credits that would have been paid absent the waiver
- ✦ Reinsurance program will be funded by pass-through funding and state assessments
- ✦ Reinsurance program details:
  - Attachment point: \$15,000
  - Coinsurance rate: 80%
  - Reinsurance cap: \$400,000

Application to implement the Minnesota Premium Security Plan (MPSP), a state based reinsurance program.

- ✦ Proposal to waive the requirement to consider all enrollees in a market to be a part of a single risk pool (Section 1312 (c)(1) of the ACA)
- ✦ State wishes to receive pass-through funding based on the amount of premium tax credits that would have been paid absent the waiver
- ✦ MPSP will be funded by pass-through funding and state appropriations
- ✦ Reinsurance program details:
  - Attachment point: \$50,000
  - Coinsurance rate: 80%
  - Reinsurance cap: \$250,000

Application to implement a reinsurance program, a premium subsidy mechanism, and a standard health benefits plan.

- ✦ Develop a standardized silver plan that will be the only plan available on the 2018 Iowa individual health insurance market
- ✦ Replace advanced premium tax credits with flat premium subsidies based on age and income
- ✦ Issuer must offer standardized plan to participate in the reinsurance program



Application to allow small employers to enroll directly with health insurance carriers.

- ✦ Proposal to waive the requirement that the state develop an online SHOP portal
- ✦ Application on hold due to recent CMS guidance delaying the required implementation of the SHOP portal until 2019