

State Health Insurance Innovations Through Section 1332 Waivers

BY COLLEEN BECKER

For the first time since the Affordable Care Act (ACA) was signed six years ago, states can seek federal approval to modify key parts of the health care law. An option in the ACA, known as [Section 1332 State Innovation Waivers](#), took effect Jan. 1, 2017.

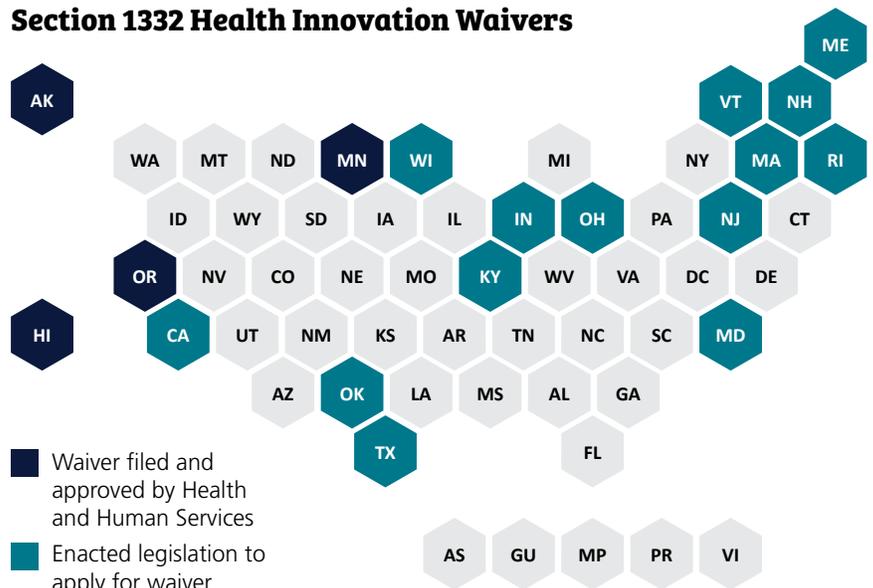
Section 1332 waivers offer states an opportunity to fashion a new health insurance coverage system customized for local context and preferences, as long as they fulfill the aims of the ACA. There are a few broad areas that are fair game for change, including allowing alternative versions of insurance exchanges, changing benefits covered, increasing the number of people covered, and implementing innovative vehicles for financing health care programs.

To apply for waiver-based reforms, states must first pass authorizing legislation. Next, states must allow for a public comment period to ensure that stakeholders have a chance to sound off on the state's application. States must also comply with [four requirements](#) before their waiver can be approved:

- **Enrollment.** A waiver program must cover a comparable number of people who would have been covered without the waiver.
- **Affordability.** A waiver program must ensure coverage and cost-sharing protections against excessive out-of-pocket costs comparable to what they would be without the waiver.
- **Comprehensiveness.** A waiver program must ensure that coverage is as comprehensive as it would be without the waiver.
- **Deficit Neutrality.** A waiver program must not increase the federal deficit.

Once received, the state's application is reviewed by the U.S. Department of Health and Human Services (HHS) and the U.S. Department of the

Section 1332 Health Innovation Waivers



Source: NCSL 2018

Treasury (USDT.) It can take up to 45 days for HHS to make a preliminary decision on whether an application is complete. If the application is initially found to be complete, it is posted on the HHS website for a public comment period. The final decision should be made within 180 days of preliminary approval.

State Action

At least 18 states have enacted legislation to initiate the 1332 waiver application process, but not all have filed waiver requests with the federal government. For example, legislatures in Indiana, Kentucky, Maryland, Rhode Island and Texas passed bills in 2018 sessions to authorize waiver applications, but have not yet submitted them.

To date, only four states have received federal approval for 1332 waivers: [Alaska](#), [Hawaii](#), [Oregon](#)

and [Minnesota](#). Hawaii waived operating a Small Business Health Options Program as required under the ACA. Alaska, Oregon and Minnesota have pursued waivers to establish a [reinsurance](#) program in which the primary insurer purchases a policy to cover claims that exceed a certain amount. Most notable among them is Alaska's Reinsurance Program, or ARP. Implemented in 2017, ARP has generated more than \$58 million in [savings](#), and serves as an informal model for other states.

The most recent 1332 waiver applications came from [Ohio](#), [Maine](#) and [Wisconsin](#). Wisconsin wants to use federal pass-through funding (in which the federal government allows the waiver program to act as a pass-through entity for federal funds) to partially finance its reinsurance program, the Wisconsin Healthcare Stability Plan (WIHSP). On May 9, the federal government deemed Wisconsin's application complete, which starts the clock ticking on the time allotted for public comment. Concurrently, Maine submitted its waiver to use federal pass-through funding to partially finance reinstating the Maine Guaranteed Access Reinsurance Association (MGARA), the state's reinsurance program that operated in 2012 and 2013.

Ohio's application sought to take the federal repeal of the penalty for individuals who don't purchase health insurance a step further by repealing the individual mandate to purchase insurance altogether. The Departments deemed Ohio's application [incomplete](#) because it did not meet section 1332 requirements.

Still unresolved and inactive in the 1332 process are [Massachusetts](#) and [Vermont](#). Their initial applications were deemed incomplete and neither state has resubmitted yet.

Three states have opted to withdraw their 1332 waiver applications. Iowa withdrew its application, which would have provided a stopgap measure to restructure the coverage offered in the state's individual market in ways not normally permitted by HHS. Additionally, it would have established a reinsurance program. A [letter](#) from Iowa Insurance

Commissioner Doug Ommen states that, "Section 1332 waivers were not designed to fix the collapsing individual health insurance markets."

California's withdrawn waiver would have allowed individuals to purchase health insurance through the state's exchange regardless of immigration status.

Oklahoma devoted significant time and resources to implement its reinsurance waiver; but had to pull the plug when time ran out to prepare for the 2018 health plan year. Officials expressed frustration in a formal [letter](#) to HHS and the treasury department about the lack of a timely federal approval process.

With [premiums expected to rise again in 2019](#) and many states nearing the end of legislative sessions, it may be difficult for lawmakers to find ways to mitigate the effects of rising costs on their constituents.

Federal Action

In a [letter](#) dated March 13, 2017, HHS and the treasury department newly reinforced and "suggested ways to help foster healthcare innovation by giving states greater flexibility." The Trump Administration in May released a [checklist](#) to help states interested in pursuing section 1332 waivers. It is intended especially for 1332 waivers that propose a high-risk pool/state-operated reinsurance program. The Centers for Medicare & Medicaid Services (CMS) encourages states interested in applying for Section 1332 waivers to reach out to both departments promptly for assistance in formulating an approach that meets the requirements.

Although the federal government has not approved any 1332 waivers since October 2017, the Center for Consumer Information and Insurance Oversight (CCIIO) within CMS continues to emphasize the waivers as a bipartisan mechanism to help stabilize states' private health insurance markets. In an address to reporters, HHS Secretary Alex Azar said, "I'm a big believer in state experimentation here."

Did You Know?

- States can use Section 1332 State Innovation Waivers to modify key parts of the Affordable Care Act.
- According to research sponsored by The Commonwealth Fund, Alaska generated more than \$58 million in health care savings in 2017 with its 1332 waiver reinsurance program.
- During the 2018 session, 18 states have pursued legislation to implement a 1332 waiver.

Additional Resources

- [NCSL webpage, Innovation Waivers: State Options and Legislation Related to the ACA Health Law](#)
- [NCSL blog, Innovation Waivers: Can Your State Change the Health Law?](#)
- [CMS webpage, Frequently Asked Questions About the 1332 State Innovation Waivers](#)

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