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Adopted and condensed for use at NCSL sessions.)



Centers for Medicare & Medicaid Services

## The Center for Consumer Information & Insurance Oversight (CCIIO)

### SECTION 1332: STATE INNOVATION WAIVERS

Section 1332 of the Affordable Care Act (ACA) permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing their residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA.

State Innovation Waivers allow states to implement innovative ways to provide access to quality health care that is at least as comprehensive and affordable as would be provided absent the waiver, provides coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and does not increase the federal deficit.

State Innovation Waivers are available beginning January 1, 2017. State Innovation Waivers are approved for five-year periods, and can be renewed. Waivers must not increase the Federal deficit.

#### Additional Resources:

- [Regulations and Guidance](#)
- [Fact Sheets](#)
- [Frequently Asked Questions \(FAQs\)](#)

#### Contact:

For additional information or to submit your application, contact the State Innovation Waiver team at [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

#### Regulations and Guidance

- March 10, 2011 Proposed Regulation  
[Application, Review, and Reporting Process for Waivers for State Innovation - Opens in a new window](#)
- February 22, 2012 Final Regulation  
[CMS-9987-F: Application, Review, and Reporting Process for Waivers for State Innovation - Opens in a new window](#)
- **Fact Sheets:** July 22, 2015 – [About the 1332 State Innovation Waiver Application Process \(reprinted below\)](#)
- **FAQs:** July 22, 2015 - [1332 State Innovation Waivers \(reprinted below\)](#)

#### About the 1332 State Innovation Waiver Application Process

States have the option to seek a State Innovation Waiver under Section 1332 of the Affordable Care Act to pursue innovative strategies to provide high quality, affordable health care coverage while retaining the statute's basic protections. The U.S. Department of Health and Human Services (HHS) and the U.S. Department of the Treasury are responsible for reviewing waiver applications.

States may submit State Innovation Waiver applications to [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov)

#### Public Input Process Prior to Submission of an Application

Prior to submitting a State Innovation Waiver application to HHS for review and consideration, a state must provide public notice and a comment period sufficient to ensure a meaningful level of public input on the application. During the public comment period, the state must conduct public hearings regarding the state's application. In addition, a state with one or

more federally recognized tribes within its borders must conduct a separate process for meaningful consultation with the tribes as part of the notice and comment process.

## Application Requirements

The final [regulations](#) specify what information needs to be included in an application for a State Innovation Waiver. Critical elements of that application include (but are not limited to):

- The list of provisions the state seeks to waive, including the rationale for the specific requests;
- Data, assumptions, targets, and other information sufficient to determine that the proposed waiver will provide coverage that is at least as comprehensive as would be provided absent the waiver, will provide coverage and cost sharing protections that keep care at least as affordable as would be provided absent the waiver, will provide coverage to at least a comparable number of residents as would be provided coverage absent the waiver, and will not increase the Federal deficit;
- Actuarial analyses and actuarial certifications to support State estimates that the waiver will comply with the comprehensive coverage requirement, the affordability requirement, and the scope of coverage requirement;
- A detailed 10-year budget plan that is deficit neutral to the Federal government;
- A detailed analysis of the impact of the waiver on health insurance coverage in the state;
- A description and copy of the enacted state legislation providing the state authority to implement the proposed waiver; and,
- A detailed plan as to how the state will implement the waiver, including a timeline.

The regulations provide more detail about each of the application elements and should be consulted carefully as states develop applications.

HHS may also request, or a state may propose, additional information to aid in the review of the application.

## Application Review Process

Upon receipt of a State Innovation Waiver application, HHS and the Department of the Treasury (the Departments) will work with the state on the review and approval process. The Departments (in coordination with other agencies as applicable) will follow the process outlined below:

1. The Departments will conduct a preliminary review within 45 days of submission to determine if the application is complete. Written notice will be provided to the state that the preliminary determination has been made. The written notice will either indicate that the application is complete or will identify elements missing from the application.
2. The preliminary determination that the application was complete does not preclude a finding during the review process that a necessary element of the application is missing or insufficient.
3. Following the preliminary determination that a state's application is complete, the Departments will provide for a public notice and comment period.
4. The final decision of the Secretaries of HHS and the Treasury will be issued no later than 180 days after the determination that an application is complete.

## Frequently Asked Questions about 1332 State Innovation Waivers

### 1. What is a State Innovation Waiver?

Under Section 1332 of the Affordable Care Act (ACA), a state can apply for a State Innovation Waiver, allowing states to implement innovative ways to provide access to quality health care that is at least as comprehensive and affordable as would be provided absent the waiver, provides coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and does not increase the federal deficit. If approved, these waivers can begin on or after January 1, 2017.

### 2. What can be waived pursuant to a State Innovation Waiver?

The Secretary of Health and Human Services and the Secretary of the Treasury are authorized to waive a number of provisions under their respective jurisdictions. Specifically, the Secretaries are authorized to waive:

- 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).

Section 1332 does not change existing waiver authority for provisions in other Federal health programs such as Medicaid or Medicare (including waiver authorities under section 3021 specific to the Center on Medicare and Medicaid Innovation or under section 1115 related to Medicaid and CHIP), although states may apply for such waivers as part of the coordinated application process to be developed by the Secretary.

### **3. How do states apply?**

States should submit their completed application in an electronic format to the Secretary of Health and Human Services at [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

### **4. Who can states contact if they are interested in submitting a waiver application and have questions?**

States should contact [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

### **5. Will states have to apply to each relevant agency separately when submitting a State Innovation Waiver?**

No. A state seeking a State Innovation Waiver should apply by submitting a completed application in electronic format to the Secretary of Health and Human Services at [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov) only. Upon receipt, applications will be transmitted to the Secretary of the Treasury or other relevant agencies for review as appropriate.

### **6. When must states submit applications for approval? How long will the process take?**

Prior to submitting an application, a state must provide a public notice and comment period sufficient to ensure a meaningful level of public input, including consultation with Federally-recognized Indian tribes within state borders. During the public comment period, the state must conduct public hearings to obtain public input regarding the state's application, and must also accept written comments.

The Secretary of Health and Human Services and the Secretary of the Treasury will review an application and make a preliminary determination of whether it is complete within 45 days after it is submitted to [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

After determining that the application is complete, the application will be made public through the Department of Health and Human Services website, and a federal public comment period will commence while the application is under review. A final decision regarding the waiver will be issued no later than 180 days after the preliminary determination of a complete application.

**State Innovation Waivers will not be available with effective dates prior to January 1, 2017.**

### **7. What guidance and regulations exist for State Innovation Waivers?**

Regulations governing the application process for State Innovation Waivers can be found here or the Federal Register at 77 Fed. Reg. 11700 (Feb. 27, 2012). Among other things, these regulations provide guidance on how to apply for a waiver and what an application from a state must contain, including actuarial and economic analyses. The regulations detail public notice and comment requirements that a state must comply with before an application is submitted, including holding public hearings, in order to facilitate a meaningful level of public involvement, input, and transparency in the state application process. They also describe the Federal public notice and comment process that will occur after a completed application has been received. The regulations also describe the requirements for post-award reporting and the standards under which post-award monitoring will take place.

As additional questions and issues arise, the Departments of Health and Human Services and Treasury will issue further guidance.

## 8. What do states have to include with their application?

The [final regulations](#) [specify what information needs to be included in an application for a State Innovation Waiver. Critical elements of that application include (but are not limited to):

- The list of provisions the state seeks to waive, including the rationale for the specific requests;
- Data, assumptions, targets, and other information sufficient to determine that the proposed waiver will provide coverage that is at least as comprehensive as would be provided absent the waiver, will provide coverage and cost sharing protections that keep care at least as affordable as would be provided absent the waiver, will provide coverage to at least a comparable number of residents as would be provided coverage absent the waiver, and will not increase the Federal deficit;
- Actuarial analyses and actuarial certifications to support State estimates that the waiver will comply with the comprehensive coverage requirement, the affordability requirement, and the scope of coverage requirement;
- A detailed 10-year budget plan that is deficit neutral to the Federal government;
- A detailed analysis of the impact of the waiver on health insurance coverage in the state;
- A description and copy of the enacted state legislation providing the state authority to implement the proposed waiver; and,
- A detailed plan as to how the state will implement the waiver, including a timeline.

The regulations provide more detail about each of the application elements and should be consulted carefully as states develop applications.



A federal government website managed by the Centers for Medicare & Medicaid Services  
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