Opportunities to Use 1332 Innovation Waivers to Promote Access to Affordable Coverage

Section 1332 of the Affordable Care Act (ACA) allows states to pursue an innovative approach to high-quality health care coverage by waiving certain requirements of the ACA. These waivers, referred to as 1332 waivers, aim to provide more choice, competition, and affordability, while still retaining the ACA's basic consumer protections. In order to receive approval from the Department of Health and Human Services (HHS) and the Treasury Department, states must meet four statutory guardrails.

The first and second guardrails require that the waiver will not impact the affordability or the comprehensiveness of health plans – coverage offered through the waiver must be as affordable and comprehensive as the coverage currently available to individuals. The third guardrail requires that at least the same number of individuals will be covered as compared to no action – the number of individuals with healthcare coverage must not decrease due to the waiver. The fourth and final guardrail requires that the waiver be deficit-neutral and not add to the federal government's deficit within a ten-year period.

These allow states to receive "pass-through" funding equal to the amount of money people would have received to fund premium tax credits and cost-sharing reduction amounts without the waiver. States have the flexibility to reinvest these funds, which are calculated by the Centers for Medicare & Medicaid Services (CMS) and the Treasury Department, into their programs to meet the needs of their specific populations, such as funding additional affordability measures.

Currently, 1332 waivers have been approved for nineteen states. Of these, fifteen states have used 1332 waivers to create reinsurance programs while also including unique amendments to their waivers. In recent years, momentum has increased for more innovative approaches to improve health care coverage and affordability through the 1332 waiver process. By providing states with the flexibility to create their own innovative healthcare programs, more individuals will have access to high-quality and affordable healthcare coverage. The table below compares and contrasts how three states have sought to use 1332 waivers in new ways.

Comparison of State 1332 Innovation Waivers

	COLORADO	WASHINGTON	MAINE
Overview and Goals	Colorado is the first state to use a 1332 waiver to implement a public health insurance option, known as the "Colorado Option." This is a new waiver amendment that builds upon the state's previously established reinsurance program. The Colorado Option is implemented as outlined in HB21-1232, offering standardized health plans on the state-based exchange that are available to all residents, regardless of immigration status. Compared to similar plans, the Colorado Option is cheaper than other marketplace plans due to premium reduction targets of 15% over three years. The revenue generated from the Colorado Option and the reinsurance program will generate savings to further improve health coverage affordability in the state.	Effective January 1, 2024, Washington's 1332 waiver will expand eligibility for qualified health plans (QHPs) offered on the exchange, including dental plans, to all Washingtonians, regardless of immigration status. SB 5377 in 2021 established the state's premium assistance program Cascade Care Savings. The 1332 waiver expands the affordability program to all Washington residents up to 250% FPL.	Maine is the first and only state to use a 1332 waiver to combine the individual and small group markets into a single risk pool, covered under the state reinsurance program, the Maine Guaranteed Access Reinsurance Association (MGARA). With a larger pool, risk is spread across the market to achieve more stability, resulting in lower premiums.
Status	Approved June 23, 2022.	Approved December 9, 2022.	Approved July 15, 2022.
Timeline	Effective January 1, 2023, through December 31, 2027.	Effective January 1, 2024, through December 31, 2028.	Effective January 1, 2023 through December 31, 2027.
Targeted Population	All Coloradans, regardless of immigration status, are eligible for the Colorado Option. During the first open enrollment period approximately 35,000 Coloradans, including 10,000 undocumented people, signed up for coverage through the Colorado Option on the state's marketplace, far exceeding expectations.	Over 100,000 Washington immigrants are currently excluded from affordable health care coverage, making up 23% of the state's uninsured population. When the waiver becomes effective, it will expand access to QHP coverage to this population. Low-income individuals up to 250% FPL will be eligible for state subsidies through the Cascade Care Savings program.	Since Maine's original 1332 waiver was implemented in 2019, the reinsurance program has been able to stabilize the individual market and control premiums. Meanwhile, premiums in the small group market have continued to rise and enrollment has declined. With the new 1332 waiver, the combined risk pools increase the size and stability of the market, thereby improving affordability and enrollment.

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Impact on People	★ Improved affordability with premium reduction requirements. ★ The combination of premium reduction targets in the new amendment and the reinsurance waiver is expected to generate premium reductions of 22% in the first year and up to 32% by the fifth year, when compared to the baseline without any waiver. ★ Creates standardized plans with a similar set of benefits that are designed to improve equity, such as by providing first-dollar coverage on certain high-value services, such as primary care and mental health services. ★ An estimated $1.5 billion in pass-through funding will be directed toward state-based subsidies for individuals up to 300% of the federal poverty level (FPL). This includes individuals who are ineligible for federal advanced premium tax credits (APTCs) such as those who are undocumented immigrants or those who fall into the family glitch.	★ Expanded access to health care coverage and affordability across the state to all Washingtonians, helping to improve health equity and remove barriers to care. ★ Expected premium reductions range from 1.4-1.6% every year in relation to the baseline 10-year projections..	★ Estimated average premiums in 2023 will be 6.0% lower for small group coverage and 8.1% lower for individual coverage, compared to premium costs without the 1332 waiver and the reinsurance program.
Impacts on Health Equity	★ Includes all Coloradoans, regardless of immigration status. ★ Required to meet culturally responsive network requirements and is designed to advance health equity in the state.	★ Includes all Washingtonians regardless of immigration status, reaching almost 105,000 people previously unable to receive coverage due to their immigration status.	★ Provides certainty and stability to the small group health insurance market by positively impacting premium levels and spreading the “most volatile component of the risk within the pooled market.”
Federal Pass-Through Funding	★ Pass-through funding is estimated to be over $1.5 billion over the course of the waiver compared to without-waiver projections: ★ 2023- $213.8 million ★ 2024- $277.3 million ★ 2025- $341.5 million	★ Pass-through funding is estimated to be over $11 million over the course of the waiver: ★ 2024- $1.7 million ★ 2025- $2.0 million ★ 2026- $2.2 million ★ 2027- $2.4 million ★ 2028- $2.6 million	★ Pass-through funding over the course of the waiver is estimated: ★ 2023- $22.8 million ★ 2024- $18.0 million ★ 2025- $18.9 million ★ 2026- $19.8 million ★ 2027- $20.7 million

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	★ 2026- $347.8 million ★ 2027- $367.6 million ★ Federal savings projected under the reinsurance waiver are estimated to total $515 million: ★ 2023- $13.3 million ★ 2024- $76.3 million ★ 2025- $137.8 million ★ 2026- $139.5 million ★ 2027- $147.9 million		
State Funding	★ $1.5 million for implementation in FY 2021-2022. ★ $1.9 million for ongoing operating costs in FY 2022-23 and beyond.	★ $55 million in state funding (plus any pass-through funds beginning in 2025) will go towards the state's subsidy program, the Cascade Care Savings Program.	★ $26.7 million every year from 2023-2027 for the reinsurance program.
ACA Provisions Being Waived	Section 1312(c)(1) and Section 1312(c)(2), which refer to single risk pool requirements in the individual and small group markets. These provisions were waived for the creation of the reinsurance program and to allow carriers to adjust premiums to meet the Colorado Option premium rate reduction targets.	Section 1312(f)(3) prohibits individuals who are not U.S. citizens or U.S. nationals, and individuals who are not lawfully present from purchasing a QHP on the exchange. By waiving this requirement, all Washingtonians will be eligible to purchase coverage through the state-based Marketplace, and all Washingtonians up to 250% FPL will be eligible for the state affordability program.	Section 1312(c)(1) and Section 1312(c)(2) have been waived for the MGARA reinsurance program for the pooled individual and small group market, and to determine the market-wide index rate for rate setting and risk adjustments. Section 1312(c)(3) has been waived to allow for quarterly adjustments for small group plans that are not renewed on a calendar year basis.
Market Impact	★ Introduces standardized plans into the market with premium reduction requirements, promoting competition in the market to offer more affordable, higher-value plans and improving the coverage options available on the exchange. ★ For the 2023 plan year, Coloradans were projected to collectively save $14.7 million by shopping and choosing the lowest cost Colorado Option plan in their preferred metal tier.	★ An expected increase in Marketplace enrollment of 1.1-1.4% every year over the course of the 10-year waiver period. ★ USofCare support for WA 1332 waiver approval	★ The combined individual and small group risk pools create a larger market, which allows for a greater spread of risk. High-cost claims will be covered by reinsurance, providing more stability. ★ Lower premiums are expected to increase enrollment in 2023 by about 5.3% in small group coverage and 2.7% in individual coverage. ★ Maine also expects that the MGARA program will continue to incentivize individual and small group insurers to offer plans in the market.

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Public Comment Period	★ State public comment on CO 1332 waiver application ★ Federal public comment on CO 1332 waiver application ★ USofCare support for CO 1332 waiver application ★ USofCare support for CO 1332 waiver approval	★ Summary of state public comments ★ Federal public comment from individuals on waiver application ★ Federal public comment from organizations on waiver application ★ USofCare support for WA 1332 waiver application	★ State public comment on ME 1332 waiver amendment ★ Federal public comments on ME 1332 waiver application ★ Federal public comment sign-on letter on ME 1332 waiver application
Stakeholder Engagement	Information here.	Information here and here.	Information here.
Helpful Resources	★ Waiver amendment application ★ Actuarial analysis ★ CMS fact sheet ★ USofCare's Colorado Option 1332 Explainer	★ Waiver application ★ Actuarial analysis can be found in Appendix C of the waiver application. ★ USofCare's Washington 1332 Waiver Explainer	★ Waiver application ★ Actuarial analysis ★ CMS fact sheet

Other Innovative 1332 Waivers

Nevada

★ SB 420 authorized the state to leverage its existing infrastructure for Medicaid Managed Care Organizations (MCOs) and commercial insurers to offer public option plans with premium reduction targets, beginning 2026. Prior to creating the public option, **SB 420 requires the state to submit a 1332 waiver application to CMS by January 1, 2024** to advance the affordability goals of the public option.

★ Nevada's 1332 waiver would generate federal pass-through funding to improve the affordability of public option plans and enable state subsidies for low-income Nevadans. If certain parameters are met, the 1332 waiver would allow Nevada to combine the risk pools for the public option and Medicaid. Additionally, a 1332 waiver could authorize new temporary coverage options as an alternative to COBRA.

★ Nevada is currently in the process of drafting a 1332 waiver application, completing an actuarial analysis, and conducting stakeholder engagement. More information can be found here.

Oregon

★ HB 4035 established a Task Force to create a Bridge Plan for Oregonians with incomes between 138%-200% of the federal poverty level (FPL) to provide coverage for people with incomes just over the Medicaid income level - people most likely to "churn" on and off of Medicaid coverage and the very population that is likely to otherwise go uninsured when the COVID-19 Public Health Emergency comes to an end and the Medicaid continuous coverage requirement expires. After considering a 1332 waiver to expand coverage in the state, the Task Force settled on the creation of a Basic Health Plan under Section 1331 of the Affordable Care Act (ACA) as the best approach to establish the Bridge Plan.

★ There is still opportunity for the state to consider pursuing a 1332 waiver once the Bridge Plan is implemented to further expand affordable coverage to Oregonians with incomes above 200% FPL.