



A Guide for Policymakers: Obtaining a Section 1332 Waiver

In recent years, policymakers have increasingly pursued innovative solutions to expand health care coverage and address increasing costs in the insurance market. A [1332 waiver](#) refers to Section 1332 of the Affordable Care Act (ACA), which enables states to create innovative methods for delivering high-quality, cost-effective health care by waiving sections of the ACA, while still maintaining fundamental safeguards and protections for people. The U.S. Department of Health and Human Services and the Treasury Department (“Departments”) are responsible for reviewing and approving 1332 waivers. Once approved, 1332 waivers are overseen by the CMS Center for Consumer Information and Insurance Oversight’s State Innovation Waiver team. 1332 waivers are active for 5 years and typically can be extended. For a waiver to be approved, it must meet the following four statutory guardrails:

- ★ The coverage provided under the waiver must be *as comprehensive and affordable as coverage would be for people without the waiver*;
- ★ Provide coverage to a *comparable number of residents* as would be covered without the waiver;
- ★ *Protect against excessive out-of-pocket costs* through protections of coverage and cost-sharing; and
- ★ It must be *budget neutral and not add to the federal deficit*.

States that receive 1332 waivers can access federal “pass-through” funding equivalent to the amount of money individuals would have received for premium tax credits (PTCs) and cost-sharing reductions without the waiver. This funding can be reinvested by states to meet the specific needs of their populations and provide additional affordability measures. **The following comprehensive checklist breaks down each essential step in the process, offering guidelines, best practices, and estimated timelines for states to navigate the 1332 application process.**

Why Seek a Waiver?

Currently, [19 states](#) have received approval for 1332 waivers. 15 of those states have used 1332 waivers to establish reinsurance programs for their states, waiving Section 1312(c)(1) of the ACA to do so (which falls under Part II of Subtitle D of Title I). In recent years, states have been exploring other uses for 1332 waivers in an effort to provide more choice, competition, and affordability to their consumers. New York, for example, has submitted a [1332 waiver application](#) to allow their Essential Plan, currently operated as a Basic Health Plan, to be expanded to individuals between 200-250% of the Federal Poverty Level (FPL). For more information on how states used their 1332 waivers in innovative ways, refer to the USofCare resource: [Opportunities to Use 1332 Innovation Waivers to Promote Access to Affordable Coverage](#).

What Gets Waived?

The Departments have the authority to waive 5 provisions of the ACA when approving a state's 1332 waiver. For a state to receive pass-through funding, one of the following provisions of the ACA **must** be waived:

- ★ [Part I of Subtitle D of Title I Sections 1301 - 1304](#): This section establishes qualified health plans (QHPs).
- ★ [Part II of Subtitle D of Title I Sections 1311 - 1313](#): This section relates to consumer choices and insurance competition through health insurance marketplaces.
- ★ Sections [36B of the Internal Revenue Code](#) and [1402 of the ACA](#): These sections relate to premium tax credits and cost-sharing reductions for marketplace plans.
- ★ [Section 4980H of the Internal Revenue Code](#): This section relates to employer-shared responsibility (sometimes referred to as the "employer mandate").
- ★ [Section 5000A of the Internal Revenue Code](#): This section relates to individual shared responsibility, which is no longer in effect at the federal level. States, therefore, can no longer pursue a 1332 waiver that waives this section of the ACA.

Partnering with the Center for Consumer Information and Insurance Oversight (CCIIO) for Success:

It is critical that regulators and staff at relevant agencies, such as a state's Division of Insurance (DOI), begin conversations with the Centers for Medicare & Medicaid Services' (CMS) Center for Consumer Information and Insurance Oversight (CCIIO) early in the process, *including when considering the language for authorizing legislation*. States that have done this have had a significantly more seamless application and implementation process. Examples of this coordination include asking CCIIO for feedback on whether the legislative language meets the federal standards for waiving one of the provisions outlined above or soliciting feedback on how a state could craft required analyses for an application. These conversations can also be especially helpful when considering waiving aspects of the ACA that have not been done before. By starting these conversations early in the process, states can gain valuable insights and guidance from CCIIO, which can inform decision-making processes and help ensure a smoother process to waiver approval.

Timeline

Securing a 1332 waiver requires meticulous planning and a long-term vision. Once a state has taken the necessary first step of passing authorizing legislation granting the ability to apply for the waiver, a specific process must be followed. The duration of this process can vary by state with certain steps demanding more time than others. Generally, states plan for the process to take 1.5 years from the passage of authorizing legislation to final approval. The average time frame for CMS approval of reinsurance waivers is 3 months, whereas other waiver uses have an average approval time frame of 7 months once submitted. Recognizing that 1332 waivers can be used to implement a wide variety of reforms, policymakers are encouraged to, when possible, connect with states with approved waivers for insights on timelines based on their own experience.

Section 1332 Innovation Waiver Process

BEFORE SUBMISSION:

Reminder: States are encouraged to engage with CCIO early in the section 1332 waiver application process to review draft legislation to determine if there are any additional requirements needed as well as discuss the assumptions the state expects of their actuarial and economic analysis.

Authorizing legislation

Advocates and legislators should consider the need for an initial study of a proposed program, stakeholder buy-in processes, and state political dynamics when determining the timeline for passing legislation. The process to apply for and receive approval of a 1332 waiver typically takes between 1.5 and 2 years, following the passage of authorizing legislation.

- ★ Legislation should establish authority for the relevant state agency/authority to pursue and implement a Section 1332 waiver. If states believe they can use existing legislation to grant statutory authority, the state should engage with the Departments early in the process to ensure its state authority meets this requirement.
- ★ Prove that waiver is required to create the intended program, including what specific programmatic pieces are contingent upon the waiver.
- ★ States should also consider including language that allows for federal and private gifts and grants to assist in establishing the program.

State Example: Colorado

Colorado was the first state to implement a public option, called the “[Colorado Option](#),” through the use of a 1332 waiver that combined their existing Reinsurance Program with the Colorado Option. In Colorado’s authorizing legislation [HB 21-1232](#), the bill authors made clear the intent of how the state planned to use the waiver to increase access to affordable health insurance plans for Coloradans, including immigrants not eligible for federal Marketplace subsidies. The legislation went as far as to include how federal pass-through funding would be used by the state once the waiver was approved. To learn more about Colorado’s active 1332 waiver, check out this [explainer](#).

Actuarial and economic analysis

According to past state experiences, acquiring actuarial and economic analysis can vary anywhere from 6 to 18 months and is contingent on the policies the state aims to implement.

- ★ States must submit an actuarial analysis and certification, conducted by a member of the American Academy of Actuaries, to support the state’s assertions that the proposed waiver complies with the coverage, comprehensiveness, and affordability requirements in each year of the waiver.

- ★ Required data and assumptions in determining the effect of waiver should identify:
 - Actuarial analysis should compare guardrail measures under the waiver and the baseline (a market in which the waiver is not approved) for each year of the waiver. If requesting pass-through funding, these comparisons should quantify the effects of the waiver.
 - The economic analysis should support the state’s finding that the waiver will not increase the federal deficit throughout the waiver period. A waiver that increases the federal deficit at any time is less likely to be approved.
 - Deficit analysis should include all costs associated with the program, including federal administrative costs, forgone tax collections, and any other expenses the federal government may incur.
- ★ As a part of the actuarial and economic analysis, states must submit a 10-year budget
 - States may opt to evaluate the effect of the waiver over the 5-year period of the waiver or the 10-year budget period.
 - The 10-year budget plan should include expected changes in projected federal funding and changes in federal revenues attributable to the waiver for each of the ten years.

State Example: Washington

Washington State made a significant change by waiving [Section 1312\(f\)\(3\)](#), which bars individuals who are not U.S. citizens, nationals, and/or those who are not lawfully present from buying qualified plans on the exchange. By taking this approach, Washington will now allow all residents, regardless of their immigration status, to access health coverage through the state-based exchange and provide them the opportunity to benefit from state subsidies that lower premium costs. As a result, approximately [105,000 uninsured](#) individuals currently ineligible for health care coverage due to federal restrictions will be able to purchase coverage on the exchange in 2024. Through a meticulous analysis conducted by independent actuaries, [Washington predicts](#) that due to the waiver, average statewide premiums for individual health insurance coverage will decrease by approximately 0.2% and the state will see a 1% increase in enrollment for individual health insurance coverage in PY 2024. Consequently, Washington’s 1332 waiver not only extends comprehensive and affordable coverage to a larger number of individuals but also contributes to lower premiums across the exchange, leading to federal savings throughout the waiver period.

WHAT TO INCLUDE IN A WAIVER APPLICATION:

- **Provisions of the ACA waived - 45 CFR 155.1308(f)(3)(iii)**
 - A list of the provision(s) of the law that the state seeks to waive, including the specific requirements that the state seeks to waive and the reasons for waiving those specific requirements.
 - If seeking pass-through funding, include an explanation of how the plan will utilize federal funding and how it will impact individual eligibility for financial assistance (absent or reduced PTCs, small business tax credits, or cost-sharing reductions).
- **Compliance with guardrails - 45 CFR 155.1308(f)(4)(i)-(iii)**
 - For each year the proposed waiver would be in effect, the application should compare coverage, comprehensiveness, affordability, and impact on the federal deficit.
 - Measures of these guardrails should be demonstrated by and included in the actuarial and economic analysis.
- **Timeline for implementation - 45 CFR 155.1308(f)(4)(iv)**
 - States must include a timeline that discusses the implementation of the waiver plan.
 - If applicable, states should provide an explanation of how the state will supply the federal government with the information necessary to implement the waiver plan at the federal level.
 - States should include any considerations of the impact on federal taxes as a result of implementation (impacts include taxpayers in the state and any associated costs to the IRS).
- **Reporting Targets - 45 CFR 155.1308(f)(4)(vi)**
 - States must outline quarterly, annual, and cumulative targets to demonstrate waiver compliance with guardrails.
 - The state may pledge to continue to report on the measures used in the application, or if there are no changes to the ten federally-required EHBs, the state can indicate that it will annually report any deviations from federal or state law.
- **Alignment with administration principles - 83 FR 53575**
 - States should describe how the proposal aligns with the Administration's values: increasing access to affordable private market coverage, ensuring sustainable spending growth, encouraging state innovation, supporting those in need, and promoting consumer-driven health care. CMS has indicated that applications that demonstrate these values will be favored.
- **Public Notice and Stakeholder Engagement**
 - A copy of the public notice that was posted including a comprehensive description of the section 1332 waiver application, where the application is available, how to submit written comments and the timeframe to submit comments.
 - A description of the key issues raised during the comment period and state responses to the issues raised.
- **Tribal Consultation - 45 CFR 155.1308(f)(2)**
 - Evidence of consultation between the state and Tribal representatives (e.g., official meetings, dear Tribal leaders letters, forums, etc.) and a description of the key issues raised during consultation, if applicable.
- **Copy of state legislation authorizing the application - 45 CFR 155.1308(f)(3)(i), (ii)**
- **Copy of actuarial and economic analysis - 45 CFR 155.1308(f)(4)(i)-(iii)**

All waiver application materials should be submitted to the State Innovation Waiver team at stateinnovationwaivers@cms.hhs.gov.

WAIVER SUBMISSION PROCESS:

Reminder: *Engaging with CCIO while putting together waiver application materials will help ensure that the application is complete and has the best chance of being approved.*

Public notice and stakeholder engagement

- ★ States are encouraged to create a state webpage where all materials related to waiver are posted, including public comment notices and other stakeholder engagement efforts, and include that link in the waiver application.
- ★ The state comment period must be open for 30 days and include at least 2 public hearings conducted on separate dates and locations, at a minimum. States are encouraged to

Tribal consultation

- ★ States with one or more Federally-recognized tribes within their borders are required to carry out a separate process for meaningful consultation with tribes.

UPON WAIVER SUBMISSION:

Review Process

- ★ The Departments will conduct a preliminary review within 45 days of submission to determine if the application is complete.
 - A 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.
- ★ It is important to note that 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. The Departments will continue to work with the state throughout the review and approval process.
 - As a part of this, federal officials may request, or a state may propose, additional information to aid in the review of the application.
- ★ Following the preliminary determination that a state's application is complete, the Departments will open a federal comment period of at least 30 days. If issues are raised during the federal comment period that were not addressed by the waiver or in the state comment period, the Departments may request that a state respond to those comments in writing as part of the waiver approval process.
- ★ 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.

Preparing for Implementation

- ★ States should begin planning for necessary technical, procedural, or administrative changes needed for implementation of the waiver during the waiver planning process.
 - In addition to internal conversations, states should engage health insurance carriers, Medicaid managed care organizations, Tribal leaders, consumer advocates, and any other relevant stakeholders in this planning to promote continuity of coverage for people and a smooth transition upon implementation.
 - One key stakeholder for conversations is a state's insurance regulator. 1332 waivers require significant information submitted by carriers to the state for reporting purposes. Including those data elements in required carrier filings will ensure that the state can meet federal reporting requirements.

Additional Resources

[Public Option Study Bills: A Key Step in the Policy Process](#)

- ★ This memo focuses on what makes a successful public option study bill and also highlights examples from public option implementation bills that could be included within study bills, such as waiver considerations.

[State Waiver Options for Health Care Innovation](#)

- ★ This resource compares and contrasts 1332 State Innovation Waivers, 1331 Basic Health Programs, and 1115 Medicaid Demonstration Waivers, to assist state leaders in considering the benefits of different types of federal waivers while developing their proposal and recommendations for programs that expand affordable coverage.

[Colorado and Washington 1332 Waiver Explainer](#)

- ★ These short memos describe the 1332 waivers approved in Colorado and Washington, including which provisions were waived, the impact on people in each state, and how other states can leverage these successes to meet the needs of their own residents.
- ★ Colorado's 1332 waiver is further explained in the following Health Affairs article, [Realizing The Potential of 1332 Waivers: A Colorado Case Study](#)

[CMS checklist for Section 1332 State Innovation Waivers](#)

- ★ This checklist published by CMS is intended to help states pursuing Section 1332 waivers as they develop and complete the required elements of a Section 1332 waiver application.

[State Health and Value Strategies Reinsurance Waiver Application Template](#)

- ★ This template serves to help states develop an application for a 1332 waiver to implement a state reinsurance program. This template seeks to make application development as simple as possible by adapting language from Oregon's successful application and indicating where elements need to be filled in or otherwise customized.