

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information and Insurance Oversight  
200 Independence Avenue SW  
Washington, DC 20201



November 14, 2016

**VIA ELECTRONIC MAIL:** Peter.Lee@covered.ca.gov

Mr. Peter V. Lee

Executive Director, Covered California

1601 Exposition Boulevard

Sacramento, California 95815

Dear Mr. Lee:

Thank you for your submission on September 30, 2016 of California's application for a State Innovation Waiver under Section 1332 of the Affordable Care Act (ACA). California seeks to waive section 1311(d)(2)(B)(i) of the ACA in order to offer unsubsidized, mirrored qualified health plans through the Covered California Marketplace to undocumented individuals who would otherwise not be eligible for Marketplace coverage. The Department of Health and Human Services (HHS) and the Department of the Treasury (the Departments) appreciate the careful consideration and thoughtful analyses that you and your team have provided to assist us in the evaluation of your waiver application.

The Departments have completed a preliminary review of the application in accordance with 45 CFR 155.1308(c). Pursuant to 45 CFR 155.1308(c)(2), I am writing to inform you that while the application meets many of the requirements for a 1332 state innovation waiver application, we have determined that the application is incomplete. We are providing you with notice that the following elements are missing or incomplete:

- 1) A comprehensive description of the State legislation and program to implement a plan meeting the requirements for a waiver under section 1332 (45 CFR 155.1308(f)(3)(i)).

While California's application includes a description of the proposed waiver program, this description does not explain how coverage under California Qualified Health Plans (CQHPs) would be reported to the IRS and to Marketplace enrollees. Under the ACA, Marketplaces generally must provide an annual report to the IRS identifying the persons covered under Marketplace plans, while issuers of plans

offered outside the Marketplace must generally provide an annual report to the IRS identifying persons covered under those plans. The plan for this reporting is material to the waiver's impact on federal administrative costs. The application should include an explanation for how coverage under CQHPs would be reported.

- 2) A 10-year budget plan to support the State's economic analyses that the proposed waiver will comply with section 1332's federal deficit requirement (45 CFR 155.1308(f)(4)(ii)(A)).

While California's application includes an economic analysis projecting that there will be neither any cost to the federal government of the waiver program nor any budgetary impact on federal subsidies, it does not include the 10-year budget plan required by regulation to support the analysis. The application should include a budget plan describing all projected costs associated with the proposed waiver program, including administrative costs and any other costs that the federal government might incur.

- 3) Reporting targets (45 CFR 155.1308(f)(4)(vi)). California's application provides a description of how California proposes to satisfy the reporting requirements of a section 1332 waiver, but it does not fully meet the regulatory requirement to specify quarterly, annual and cumulative targets for each of the guardrails. Note that failure to meet any projected targets would not automatically mean that the state failed to materially comply with the requirements specified by the section 1332 State Innovation Waiver.

Please provide additional information that fills the information gaps identified above. The Departments welcome California's submission of a revised section 1332 State Innovation Waiver application that provides all the information required to be contained in a waiver application. Upon receipt of an application, the Departments will conduct a preliminary review within 45 days to determine if the application is complete. Please do not hesitate to contact us if you have any questions.

Sincerely,



Christen Linke Young  
Principal Deputy Director  
Center for Consumer Information and Insurance Oversight

Cc: Mark J. Mazur, Assistant Secretary for Tax Policy, U.S. Department of the Treasury