

# State Relief and Empowerment Waivers

July 2019



# Disclaimer

*The information provided in this presentation is intended only as a general, informal summary of technical legal standards. It is not intended to take the place of the statutes, regulations, and formal policy guidance that it is based upon. This presentation summarizes current policy and operations as of the date it was presented. Links to certain source documents have been provided for your reference. We encourage audience members to refer to the applicable statutes, regulations, and other interpretive materials for complete and current information about the requirements that apply to them.*

*This document generally is not intended for use in the State-based Marketplaces that do not use HealthCare.gov for eligibility and enrollment. Please review the guidance on our Agents and Brokers Resources webpage (<http://go.cms.gov/CCIIOAB>) and [Marketplace.CMS.gov](http://Marketplace.CMS.gov) to learn more.*

*Unless indicated otherwise, the general references to “Marketplace” in the presentation only includes Federally-facilitated Marketplaces (FFMs) and State-based Marketplaces on the Federal Platform.*

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# What are Section 1332 Waivers?

- Under Section 1332 of the Patient Protection and Affordable Care Act (PPACA), a state can apply for a **State Relief and Empowerment Waiver**, allowing the state to implement innovative ways to provide access to quality health care so long as coverage available under the waiver is at least as comprehensive and affordable as would be available under the PPACA absent the waiver, coverage is provided to a comparable number of residents of the state as would be provided coverage absent a waiver, and the waiver does not increase the federal deficit.
- For a waiver to be approved, it has to meet the four guardrails below. This means that for each year of the waiver, the application must compare measures of **coverage**, **comprehensiveness**, **affordability**, and the impact on the **federal deficit** under the waiver to those measures absent the waiver (referred to as the baseline).
- Waivers can be granted for up to a five-year period.
- The Department of Health & Human Services (HHS) and the Department of the Treasury (collectively, the Departments) are responsible for reviewing waiver applications.



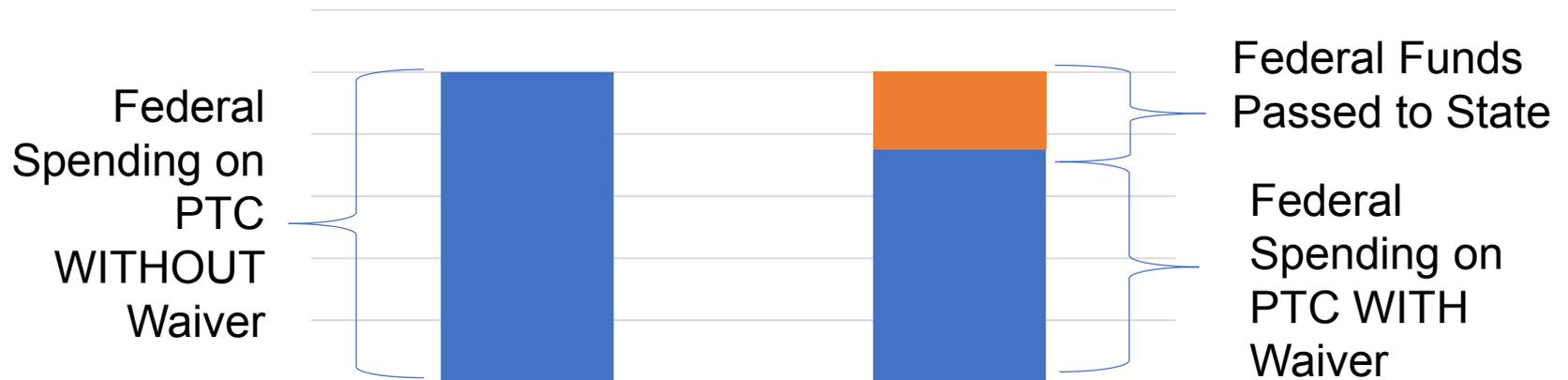
# What Can Be Waived?

- Part I of Subtitle D of Title I of the PPACA (relating to establishing qualified health plans (QHPs));
- Part II of Subtitle D of Title I of the PPACA (relating to consumer choices and insurance competition through health insurance Exchanges);
- Sections 36B of the Internal Revenue Code and 1402 of the PPACA (relating to premium tax credits (PTCs) and cost-sharing reductions (CSRs) for QHPs offered within the Exchanges); and
- Section 4980H of the Internal Revenue Code (relating to employer shared responsibility).

# Pass-through Funding

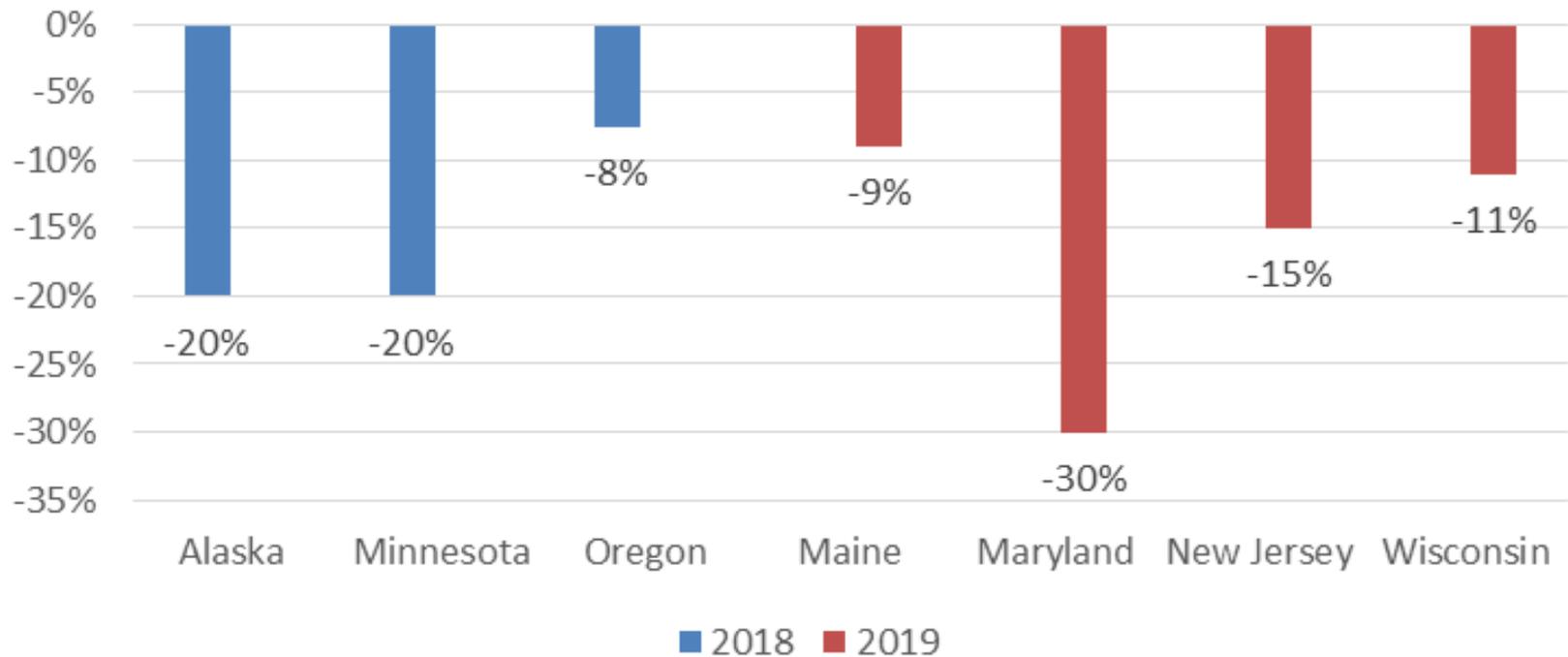
If a waiver saves the federal government money on PTCs, small business tax credits, or CSRs, the savings (called pass-through savings) can be passed to the state for implementation of the state's waiver plan.

- Note: The pass-through amount will be reduced if necessary to ensure federal deficit neutrality.



# Projected Impact of Approved Waivers

## Projected Premium Impact in First Waiver Effective Year



# 1332 State Activity

State	Waiver Topic	Status
Hawaii	SHOP	Approved
Alaska, Maine, Maryland, Minnesota, New Jersey, Oregon, Wisconsin	Reinsurance	Approved
Colorado and North Dakota	Reinsurance	Under federal review, federal public comments June 5 – July 5
Montana	Reinsurance	Under federal review for completeness
Rhode Island, Delaware	Reinsurance	In development and in state public comment period
Idaho	Choice for 100-138 FPL for PTC or Medicaid, potential 1115 Coordinated waiver	In development and in state public comment period

# State Innovation Section 1332 Waivers

1332 waivers are one-way CMS is providing states with flexibility to establish innovative ways to stabilize the risk pool and meet the needs of their residents in their particular states. These Section 1332 waivers are now called State Relief and Empowerment Waivers to reflect this new direction and opportunity.

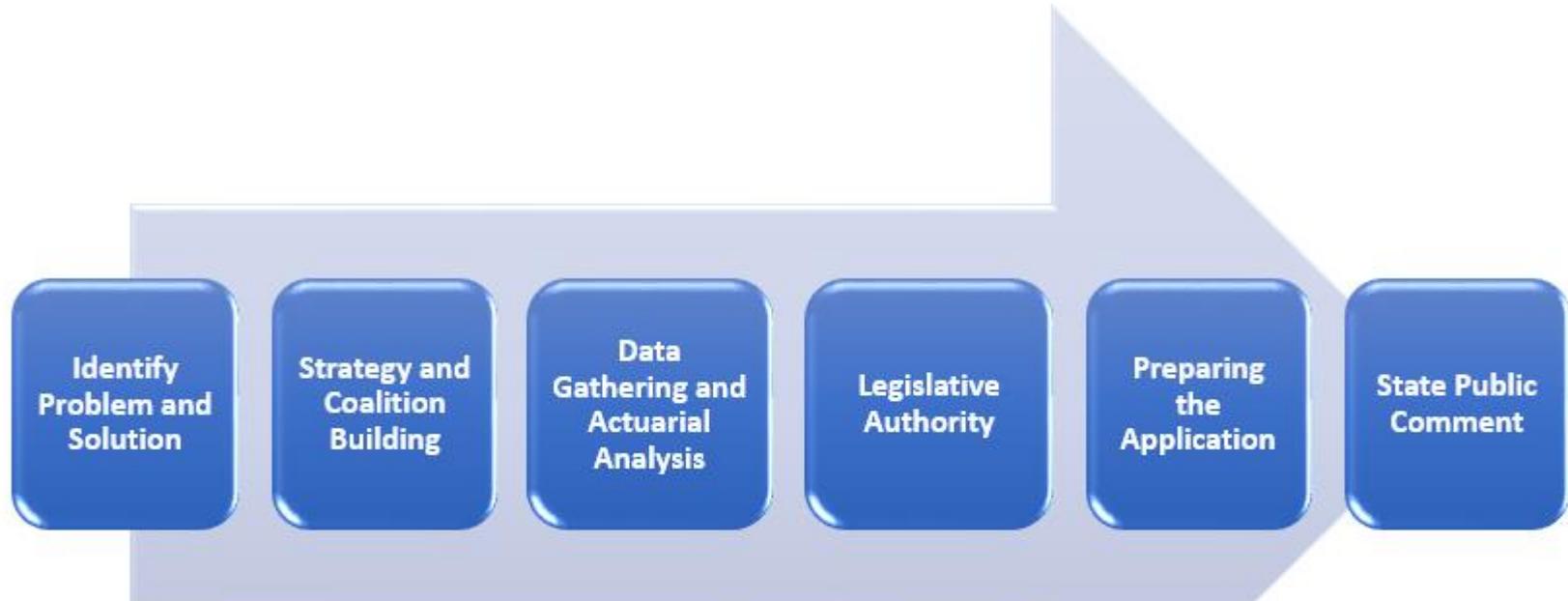
- **1332 Guidance:** New guidance that provides greater flexibility for states to pursue waivers under section 1332 to waive certain PPACA requirements
- **1332 Waiver Concepts:** To help foster discussion with states, and illustrate how states might take advantage of this new opportunity

# Section 1332 State Relief and Empowerment Waiver Concepts: Overview

CMS released four waiver concepts for states' use to promote more affordable, flexible health insurance coverage options through State Relief and Empowerment Waivers. CMS is providing states with these waiver concepts in an effort to spur innovation, reduce burden for states with potentially limited policy resources or legislative schedules, and illustrate how states might take advantage of new flexibilities provided in recently released guidance. The waiver concepts can be utilized by individual states to improve their health care markets. The four concepts are:

- State-Specific Premium Assistance
- Adjusted Plan Options
- Account-Based Subsidies
- Risk Stabilization Strategies

# 1332 Pre-Application Process Overview



Note: These steps are illustrative as some steps are happening simultaneously or in different order depending on the state.

# Strategy and Coalition Building

Developing a waiver idea and coalition building?

- Who are the stakeholders impacted to engage with (i.e., advocates, issuers, legislators, providers, hospitals)?
- Working group approach vs. specific proposal?
- Timing Considerations: What is the timeline for the waiver or policy change to be implemented? Does the waiver timeline impact rate setting and plan submission timelines? Are there operational considerations?

# State Legislative Authority

- Legislative authority is required for a 1332 waiver application to be complete. When a state submits a waiver application, it should include legislation establishing authority to pursue a Section 1332 waiver and/or for the program to implement a state plan for a waiver.
- *Note: States can simultaneously pursue legislative authority to pursue a waiver while developing and drafting a waiver application and actuarial analysis.*

# 1332 Application Process Overview



# Additional Resources

- **CCIIO website**

[https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_state\\_Innovation\\_Waivers-.html](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-.html)

- **Regulations 45 CFR 1300-1328 February 2012**

<https://www.govinfo.gov/content/pkg/FR-2012-02-27/pdf/2012-4395.pdf>

- **Guidance - December 2015**

<https://www.federalregister.gov/documents/2015/12/16/2015-31563/waivers-for-state-innovation>

- **Guidance- October 2018**

<https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers>

*Note: The guidance has a 60 day comment period which ended December 24, 2018.*

- **Waiver Concepts Discussion Paper November 2018**

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Waiver-Concepts-Guidance.PDF>

- **Secretary Letter to States - March 2017**

[https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter\\_508.pdf](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter_508.pdf)

- **Checklist for States on State Reinsurance Waivers - May 2017**

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf>

# Acronym Definitions

Acronym	Definition
CMS	Centers for Medicare & Medicaid Services
CSRs	Cost Sharing Reductions
FFM	Federally-Facilitated Marketplace
FPL	Federal Poverty Level
HHS	Department of Health & Human Services
MLMS	Marketplace Learning Management System
PPACA	Patient Protection and Affordable Care Act
PTC	Premium Tax Credit
QHP	Qualified Health Plan

# Questions?

- We encourage states interested in applying for Section 1332 waivers to reach out to HHS and Treasury (the Departments) as soon as possible.
- Email [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov) for assistance in formulating and enacting a plan that meets the requirements of Section 1332.

## Additional Resources

For additional information about the Marketplace Agents and Broker Program, please visit <http://go.cms.gov/CCIIOAB>