

Checklist for Section 1332 State Relief and Empowerment Waivers (also called section 1332 waivers or State Innovation Waivers) Applications **(Updated July 2019)**

Introduction: Section 1332 of the Patient Protection and Affordable Care Act (PPACA) permits a state to apply for a State Relief and Empowerment Waiver (also referred to as a section 1332 waiver or State Innovation Waiver) to pursue innovative strategies for providing their residents with access to high quality, affordable health coverage.¹ The Centers for Medicare & Medicaid Services (CMS) within the Department of Health and Human Services (HHS) and the Department of the Treasury (collectively, the Departments) review section 1332 waiver applications.

In order for the Departments to be able to approve a section 1332 waiver application, the state must demonstrate that the waiver will provide access to quality health care that is at least as comprehensive and affordable as would be provided without a waiver, will provide coverage to at least a comparable number of residents of the state as would be provided coverage without a waiver, and will not increase the federal deficit. Under an approved section 1332 waiver, a state may receive pass-through funding associated with the resulting reductions in federal spending on Exchange financial assistance consistent with the statute.

The Departments are interested in working with states on section 1332 waivers that would lower premiums for consumers, improve market stability, and increase consumer choice. On October 24, 2018 the Departments published guidance (83 FR 53575, 2018 Guidance) providing information about the requirements that must be met for the approval of section 1332 waivers, including the Secretaries' application review procedures, the calculation of pass-through funding, certain analytical requirements, and operational considerations.² The 2018 Guidance replaces the guidance related to section 1332 of the PPACA that was previously published on December 16, 2015 (80 FR 78131). Additionally, in November 2018, CMS released four State Relief and Empowerment Waiver Concepts: Discussion Paper (2018 Discussion Paper).³ These waiver concepts are offered to spur innovative ideas that can be utilized by individual states to improve their health care markets. The four waiver concepts include: State-Specific Premium Assistance, Adjusted Plan Options, Account Based Subsidies, and Risk Stabilization Strategies. We welcome the opportunity to work with states to take advantage of the new flexibilities provided in the guidance and to pursue section 1332 waivers incorporating these waiver concepts. The Departments are committed to empowering states to innovate in ways that will strengthen their health insurance markets, expand choices of coverage, target public resources to those most in need, and meet the unique circumstances of each state.

Checklist: This checklist is intended to help states pursuing section 1332 waivers as they develop and complete the required elements of a section 1332 waiver application. The regulations governing section 1332 waiver applications are at 45 CFR Part 155 Subpart N.⁴ The Departments may ask the state to submit additional supporting information. We have also highlighted where specific information would be helpful for each waiver concept. More information can be found in regulations⁵, guidance⁶, and the 1332 webpage⁷. The Departments encourage states interested in applying for section 1332 waivers to reach out to the Departments promptly for assistance in formulating an approach that meets the requirements of section 1332. If you have further questions, please contact StateInnovationWaivers@cms.hhs.gov.

	HHS Citation and Description	Comments
1	<p>45 CFR 155. 1308(a),(b), (c), (d)</p> <p>Application format, application timing, preliminary review, notification of preliminary determination</p>	<p>E-mail applications to StatelInnovationWaivers@cms.hhs.gov.</p> <p>The state should submit their applications with enough time to allow for implementation of the section 1332 state plan as outlined in the application, and should account for the federal public comment period and the Departments’ review of the application in its timeline. In general, submission during the first quarter of the year prior to the year health plans affected by the waiver would take effect would permit sufficient time for review and implementation of the application and affected plans. States pursuing a state waiver plan that includes any of the 2018 Discussion Paper should refer to the timelines for implementation in the waiver concepts discussion paper.</p> <p>The Departments will conduct a preliminary review of the application for completeness within 45 days of receipt of the application per 42 CFR 155.1308(c)(1). The Departments will issue a final decision no later than 180 days after the date that a complete application was received in accordance with 42 CFR 155.1308, per 45 CFR 155.1316(c).</p> <p><i>Note:</i> Additional time may be needed for implementation for states proposing to utilize the federal platform to implement its waiver plan, such that technical changes to the federal platform’s information technology system or to the operating procedures of the federal platform is required. States should engage with HHS early in the section 1332 waiver application process to determine whether the federal platform can</p>

¹ Provisions that may be waived include the following: 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 marketplaces); Sections 36B of the Internal Revenue Code and 1402 of the PPACA (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).

² 83 FR 53575, available at <https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers>

³ 2018 Discussion Paper, available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Waiver-Concepts-Guidance.PDF>

⁴ These regulations are also codified at 31 CFR Part 33. For purposes of this checklist, citations are made to the regulations at 45 CFR Part 155 Subpart N.

⁵ 77 FR 11700, available at <https://www.gpo.gov/fdsys/pkg/FR-2012-02-27/pdf/2012-4395.pdf>

⁶ 83 FR 53575, available at <https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers>

⁷ 1332 web page, available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html

		accommodate the technical changes that support their state needs and requested flexibilities. Similarly, states considering a waiver of any federal tax provision should engage with the Departments early in the process to assess whether the waiver proposal is feasible for the Internal Revenue Service (IRS) to implement, and to assess the administrative costs to the IRS of implementing the waiver proposal.
2	45 CFR 155.1308(f)(2) Written evidence of the state’s compliance with the public notice and comment requirements, set forth in 45 CFR 155.1312.	Include: <ol style="list-style-type: none"> 1. A copy of the public notice that was posted either on a website or through other effective means of communication. Per 45 CFR 155.1312(b), the notice must include 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. The comment period should in no cases be less than 30 days. The public notice should include the location, date, and time of public hearings. 2. Description the key issues raised during the state comment period.
	Written evidence of the state’s compliance with the public hearings requirements, set forth in 45 CFR 155.1312.	Include: <ol style="list-style-type: none"> 1. Evidence that a minimum of two public hearings were conducted regarding the state’s application (e.g., notice or agenda). These hearings should be convened on separate dates and locations. 2. Description the key issues raised during public hearings.
	Written evidence of state’s compliance with the meaningful Tribal consultation requirements (if the state has one or more Federally-recognized Indian tribes), set forth in 45 CFR 155.1312.	Include: <ol style="list-style-type: none"> 1. Evidence of consultation between the state and Tribal representatives (<i>e.g.</i>, official meetings, dear Tribal leaders letters, forums, etc.). 2. Description of the key issues raised during consultation.
3	45 CFR 155.1308(f)(3)(i), (ii) Comprehensive description of state’s enacted legislation and	Include a copy of the enacted state legislation, regulation, or executive order, if relevant, establishing authority to pursue a section 1332 waiver and/or for the program to implement a state plan for a waiver. Although states must generally enact legislation

	<p>program to implement a plan meeting the requirements for a section 1332 waiver and a copy of the state's enacted legislation</p>	<p>establishing authority to pursue and implement a section 1332 waiver, in certain circumstances, states may use existing legislation that provides statutory authority to enforce PPACA provisions or implement the state plan if it is combined with state regulation or a state executive order that authorizes the actions to be taken under a waiver. A state should engage with the Departments early in the process to discuss whether its state authority meets this requirement.</p> <p><i>Note:</i> Legislation may need to be specific to a state's plan. States are encouraged to engage with HHS early in the section 1332 waiver application process to review draft legislation to determine if there are any additional requirements needed.</p> <p>For the <i>Risk Stabilization Section 1332 Waiver Concept</i> to implement a state-operated high-risk pool/ reinsurance program if the state is seeking pass through funding:</p> <p>1) If the state has authority to apply for a waiver and discretion to implement the high-risk pool/state-operated reinsurance program (i.e. "may" be implemented), the state should include in the state's application that the high-risk pool/state-operated reinsurance program cannot operate without an approved section 1332 waiver in place as described below in section 4 of this checklist.</p> <p>2) If the state has authority to apply for a waiver, but a requirement that a high-risk pool/state-operated reinsurance program "must" or "shall" be implemented, then the state must make the high-risk pool/state-operated reinsurance program contingent upon federal approval of the waiver (or will become effective only if the section 1332 waiver is approved). This contingency is required for pass-through funding to be calculated since the program is mandated in the state's legislation. This contingency can be accomplished by making appropriations or funding for the program or the authorization for the reinsurance program contingent on approval of the section 1332 waiver, or by otherwise structuring the legislation, regulation, or executive order so that the program cannot operate without an approved section 1332 waiver in place.</p>
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4	<p>45 CFR 155.1308(f)(3)(iii)</p> <p>List of provision(s) of the law that the state seeks to waive and reason for the specific request(s).</p>	<p>The state should include a list of the provision(s) of the law and the specific requirements for which the state seeks to waive and a description of the reason(s) for the specific requests. The state should also discuss how the waived provisions will facilitate the state’s plan.</p> <p>If the state is seeking pass-through funding, the state should include an explanation of how, due to the structure of the state plan and the statutory provisions the state has requested to have waived, the state anticipates that individuals would not qualify for financial assistance (premium tax credits (PTC), small business tax credits, or cost-sharing reductions) or would qualify for reduced financial assistance for which they would otherwise be eligible absent the section 1332 waiver. If the state expects to receive pass-through funding, the state should explain how the state plans to use that funding for the state plan.</p> <p>If the state’s legislation gives the state the discretion to (i.e. may) apply for a waiver and implement a program, the state should explain in the application that the program will not go into effect without an approved section 1332 waiver in place.</p> <p>For the <i>Risk Stabilization Waiver Concept</i> to implement a state-operated high-risk pool/reinsurance program/state complex care plan for the individual market a state should request to waive Section 1312(c)(1)⁸ to the extent it impacts the marketwide index rate and the reinsurance program/high-risk pool will lower premiums as part of the state plan.</p> <p>For the <i>State-Specific Premium Assistance Waiver Concept</i> a state should request to waive PTC (section 36B of the Code and section 1402 of the PPACA, both waived in entirety), in addition to provisions around QHPs, such as section 1301(a), and provisions</p>
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⁸ For example, a state could waive Section 1312(c)(1) related to the individual market single risk pool in connection with implementation of a state-operated reinsurance program. Section 1312(c)(1) requires a health insurance issuer to consider “all enrollees in all health plans offered by such issuer in the individual market to be members of a single risk pool.” In its waiver application, the State would be required to explain how waiver of the single risk pool provision would facilitate the operations of and/or requirements for participation in the State’s reinsurance program or high risk pool and/or mechanism for a high risk pool in its individual insurance market in terms of its decision to implement its reinsurance program. For example, a state might explain how in order to maximize the rate-lowering impact of their proposal, the state would like to waive the single risk pool provision at 45 CFR 156.80 to the extent it would otherwise require excluding total expected state reinsurance payments when establishing the market wide index rate.

		<p>relating to Exchange operations, such as section 1311(d)(2)(B)(i), to implement the new state plan.</p> <p>For the <i>Adjusted Plan Options Waiver Concept</i> a state should request to waive provisions relating to PTC under section 36B of the Code and CSRs under section 1402 of the PPACA. In addition, the state should request a waiver of provisions related to QHPs, such as 1301(a) and such as section 1311(d)(2)(B)(i) of PPACA, which prohibits Exchanges from making available any health plan that is not a QHP.</p> <p>For the <i>Account Based Subsidies Waiver Concept</i> a state should request to waive PTC (section 36B of the Code and section 1402 of the PPACA) to establish a new subsidy program and also fund health expense accounts.</p>
5	<p>45 CFR 155.1308(f)(4)(i)-(iii)</p> <p>Actuarial analyses and actuarial certifications</p> <p>Economic analyses</p> <p>Data and assumptions</p> <p><i>*Note a state can combine the elements of an actuarial analysis and economic analysis into one report or submit separate actuarial and economic reports.</i></p>	<p>For all waivers, a state should include:</p> <p>1) An actuarial analysis and certification, which should be conducted by a member of the American Academy of Actuaries, to support the state’s finding that the proposed waiver complies with the coverage, comprehensiveness, and affordability requirements in each year of the waiver.</p> <p>i. A section 1332 state plan may comply with the coverage requirement if a comparable number of state residents eligible for coverage under title I of the PPACA will have health care coverage under the section 1332 state plan as would have had coverage absent the waiver. The Departments will consider all forms of private coverage in addition to public coverage, including employer-based coverage, individual market coverage, and other forms of private coverage.</p> <p>a. As provided in 31 CFR part 33 and 45 CFR part 155, subpart N, the waiver application must include analysis and supporting data that establishes that the waiver satisfies the scope of coverage requirement, including information on the number of individuals covered by income, health expenses, health insurance status, and age group, under title I of PPACA and under the waiver, including year-by-year estimates. The application should identify any types of individuals who are more or less likely to be covered under the waiver than under current law.</p>

		<p>ii. A section 1332 state plan may comply with the comprehensiveness and affordability requirements if access to coverage that is as affordable and comprehensive as coverage forecasted to have been available in the absence of the waiver is projected to be available to a comparable number of people under the waiver. The Departments will not require projections demonstrating that this coverage will actually be purchased by a comparable number of state residents.</p> <p>a. As provided in 31 CFR part 33 and 45 CFR part 155, subpart N, the waiver application must include analysis and supporting data that establishes that the waiver satisfies the comprehensiveness and affordability guardrails. This includes an explanation of how the coverage available under the waiver differ from the coverage chosen absent the waiver (if the coverage differs at all) and how the state determined the coverage to be as comprehensive. It also includes information on estimated individual out-of-pocket costs (premium and out-of-pocket expenses for deductibles, co-payments, co-insurance, co-payments and plan differences) by income, health expenses, health insurance status, and age groups, absent the waiver and for available coverage under the waiver. The application should identify any types of individuals (including those individuals who are low income or have high expected health care costs) for whom affordability of coverage would be reduced by the waiver and also identify any types of individuals for whom affordability of coverage would be improved by the waiver.</p> <p>b. Additionally, a 1332 state plan must address how the waiver impacts those with high expected health care costs and those with low incomes, the analysis should include the impact on these consumers.</p> <p>2) An economic analysis to support the state’s finding that the waiver will not increase the federal deficit over the period of the waiver (which may not exceed five years unless renewed) or in total over the ten-year budget period. The ten-year budget plan should describe the changes in projected federal spending and changes in federal revenues attributed to the waiver for each of the ten years. The Departments will</p>
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		<p>these projections might include overall and Second Lowest Cost Silver Plan premium (SLCSP) In addition, the actuarial and/or economic analyses must include:</p> <ul style="list-style-type: none"> • A projection of the following items separately under both a ‘without-waiver’ scenario and a ‘with-waiver’ scenario: <ul style="list-style-type: none"> • Number of non-group market enrollees by income as a share of FPL (0% - 99%, ≥100% to ≤150%, >150% to ≤200%, >200% to ≤250%, >250% to ≤300%, >300%- ≤400%, and greater than 400% of FPL), by PTC-eligibility, and by plan. • Overall average non-group market premium rate. • SLCSP rate or if a state is pursuing a <i>State-Specific Premium Assistance Waiver Concept</i> the state applicable benchmark plan rate for the state subsidy program for a representative consumer (e.g., a 21-year old non-smoker), by rating area and issuer-specific service area. The state needs to identify where issuers have service areas that are smaller than rating areas. • The state’s age rating curve (or statement that federal default is used). • Aggregate premiums, PTC, and, if pursuing a <i>State-Specific Premium Assistance Waiver Concept</i>, the applicable state subsidy amounts. • Exchange user fee for Federally-facilitated Exchanges (FFE) or State-based Exchanges using the Federal Platform (SBE-FP) states. • Documentation of all assumptions and methodology used to develop the projections and growth of health care spending. <p>In addition to the information above, states considering establishing a <i>Risk Stabilization Waiver Concept</i> to implement a state operated high-risk pool/reinsurance program/state complex care plan should use a baseline in which there is no state or federal funding for a state high-risk pool/reinsurance program, and should compare premiums and coverage under the baseline for each year to those projected under the waiver (i.e. with a high-risk pool/reinsurance program in effect). In addition to the information above the actuarial or economic analyses must include:</p>
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6	<p>45 CFR 155.1308(f)(4)(iv)</p> <p>Draft timeline for implementation of the proposed waiver</p>	<p>Include a timeline and discussion of the implementation of the waiver plan. <i>If applicable</i>, include an explanation as to how the state will provide the federal government with all information necessary to administer the waiver at the federal level.</p> <p>CMS operates the Exchange information technology platform (the federal platform) utilized by the FFEs and some state Exchanges which may support increased variation and flexibility for states that may want to leverage components of the federal platform to implement new models through section 1332 waivers. These improvements may include functionality that will enable states to work with private industry partners to create their own websites that could replace the consumer-facing aspects of HealthCare.gov for their state, while allowing the state to utilize aspects of the back-end technology that supports the FFE. States should engage with HHS early in the section 1332 waiver application process to determine whether the federal platform can accommodate state needs. During this time, HHS will work to estimate potential funding costs to implement the requested flexibilities. States will be responsible for funding all customized technical builds, in addition to the funding of year-round customized operational support.</p> <p>As part of implementation of the state’s waiver plan the state should also consider if there will be federal tax consequences for taxpayers in the state or associated federal costs to the Internal Revenue Service (IRS).</p> <p>Please see the section <i>Things to consider and/or additional information on implementation approaches</i> for each waiver concept for additional questions to consider.</p>

7	<p>45 CFR 155.1308(f)(4)(v)(A)-(E)</p> <p>Additional Information</p>	<p>Additional Information in support of the waiver application that is pertinent to the state’s waiver plan. This may include:</p> <ol style="list-style-type: none"> 1) Explanation of whether the waiver increases or decreases the administrative burden on individuals, insurers, or employers. 2) Explanation of whether the waiver will affect the implementation of PPACA provisions which are not being waived. <p><i>Note:</i> The state should identify if implementation of or compliance with any section of the PPACA would be impeded, frustrated, or otherwise adversely affected by implementation of the proposed waiver.</p> <ol style="list-style-type: none"> 3) Explanation of how the waiver will affect residents who need to obtain health care services out of the state. Please include whether the state health plans provide for coverage out of state. 4) If applicable, an explanation as to how the state will provide the Federal government with all information necessary to administer the waiver at the Federal level. 5) Explanation of how the state’s proposal will address potential compliance, waste, fraud, and abuse.
8	<p>45 CFR 155.1308(f)(4)(vi)</p> <p>Reporting targets</p>	<p>States must submit quarterly, annual, and cumulative targets to demonstrate that the waiver remains in compliance with the comprehensiveness, affordability, coverage, and the federal deficit neutrality requirements. For example, a state might meet this requirement by proposing to continue to report the same data used to support the application findings as required under 45 CFR 155.1308(f)(4).</p> <p>For the comprehensiveness requirement, if there is no change to the provision of the ten Essential Health Benefits (EHB) identified in the benchmark plan, the state can indicate that it will report on any modifications from federal or state law on an annual basis.</p> <p>For the <i>Risk Stabilization Waiver Concept</i> to implement a state-operated high-risk pool/reinsurance program/state complex care plan, the state must provide each year the actual SLCSP premium under the waiver and an estimate of the premium as it</p>

		would have been without the waiver, for a representative consumer in each rating area. Coverage and affordability metrics may be also reported on an annual basis.
9	83 FR 53575 Administration's Principles	The state's waiver application should describe how the state's waiver plan aligns with the Administration's principles described in the 2018 Guidance: to provide increased access to affordable private market coverage, encourage sustainable spending growth, foster state innovation, support and empower those in need, and promote consumer-driven healthcare. The Secretaries will consider favorably section 1332 waiver applications that advance some or all of these five principles as elements of a section 1332 waiver application.