



Administrator

Washington, DC 20201

Dear Governor:

The Trump Administration is committed to assisting states to develop better health care programs for their citizens. Since taking office, we have worked closely with states to approve seven reinsurance waivers, all resulting in lower premiums. We recognize state officials are far better positioned to address their state's health care challenges than the federal government. That is why the Centers for Medicare and Medicaid Services (CMS) and the U.S. Department of the Treasury (collectively, the Departments) recently issued new guidance for State Relief and Empowerment Waivers to give states greater flexibility to adopt new state health care programs, enhance consumer choice, and strengthen their health insurance markets. We encourage you to reach out to us to learn how to take advantage of these new waiver opportunities.

The implementation of the Affordable Care Act (ACA) imposed new federal health care requirements that took away a large portion of a state's traditional regulatory role over health insurance. This took power away from states, which now poses serious challenges to states as they wrestle with the ACA's negative impact on state insurance markets.

Since the federal government began implementing the ACA's requirements, health insurance premiums have skyrocketed. Average premiums more than doubled in states using HealthCare.gov between 2013 and 2017, with some states experiencing far more dramatic increases. Insurer participation also declined dramatically. Today, in over half the counties across America, people have just one insurer available to them. While CMS recently reported some positive news—average premiums for a benchmark plan on HealthCare.gov will drop by 1.5 percent in 2019 and more insurers will enter the market—premiums are still far too high.

In the face of these problems, federal law, under Section 1332 of the ACA, allows states to waive certain ACA requirements to regain a measure of control over their health care markets and programs. The clear intent of the law is to empower States to develop alternatives to the ACA that would not be possible under the current requirements of the law. These waivers can be used to waive certain ACA provisions including those related to Qualified Health Plans (QHPs), the duties of a State Exchange, premium subsidies, and the employer mandate, to name a few.¹ To receive approval for a State Relief and Empowerment Waiver, a state must demonstrate that the proposed waiver will meet four guardrails that establish parameters aimed at ensuring people

¹ Provisions that may be waived include the following: Part I of Subtitle D of Title I of the Affordable Care Act (relating to establishing qualified health plans (QHPs)); Part II of Subtitle D of Title I of the ACA (relating to consumer choices and insurance competition through health insurance marketplaces); Sections 36B of the Internal Revenue Code and 1402 of the ACA (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).

retain access to high-quality, affordable coverage, as well as protecting against any increase to the federal deficit.

Despite the ACA's provision for waivers, the previous Administration issued guidance in December 2015 that severely restricted the types of waivers the federal government would accept. In effect, this guidance only allowed for waivers for state health care programs that mirrored the ACA and provided the same coverage at the same price to the same people.

We are pleased to inform you that this prior guidance has been rescinded and replaced by new guidance that gives states the flexibility available under the law. As we evaluate future waivers, the Departments will consider how well each waiver supports five principals for a high performing health care system. Moving forward, state waivers should aim 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.

Compared to the 2015 guidance, this new guidance empowers states to provide relief through a number of new tools. Specifically, the guidance increases flexibility with respect to the guardrails and the requirement to enact a law to implement a waiver. In addition, the guidance provides new functionality for states to leverage components of the federal platform and work with private industry. While the ACA still imposes substantial limits on traditional state power in the health care arena, this guidance gives states a real measure of flexibility to develop innovative new approaches.

In addition to this new guidance, to help states develop waivers, CMS is preparing to publish a series of Waiver Concepts in an effort to spur conversation and innovation with states. These Waiver Concepts are offered to serve as a springboard for innovative ideas that may operate to improve the health care markets in individual states to meet the unique needs of their citizens.

To be clear, nothing in this new guidance reduces protections for people with pre-existing conditions. This Administration remains firmly committed to maintaining protections for all Americans with pre-existing conditions.

We are releasing this guidance now to enable states to seek innovative ways to stabilize the risk pool in their markets as states enter their legislative sessions. We encourage states interested in applying for a State Relief and Empowerment Waiver to reach out to the Departments promptly for assistance in formulating an approach that meets the requirements. We are hopeful that some states will be able to take actions to benefit their citizens through these waivers as early as 2020. If your team would like to discuss waivers in more detail, please email stateinnovationwaivers@cms.hhs.gov. You may also find general information about waivers at

the CMS website.² The Departments look forward to collaborating with you on innovative new policies to build a healthier tomorrow.

Sincerely,


Seema Verma

Cc: David Kautter, Assistant Secretary for Tax Policy, U.S. Department of the Treasury

² https://www.cms.gov/CCIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-.html