

Tracking Section 1332 State Innovation Waivers

Through Section 1332 of the Affordable Care Act (ACA), states may apply for innovation waivers to alter key ACA requirements in the individual and small group insurance markets. States can use the flexibility granted by 1332 waiver authority to shore up fragile insurance markets, address unique state insurance market issues, or experiment with alternative models of providing coverage to state residents. As states explore ways to address access and affordability issues in their individual and small group markets, they are increasingly turning to 1332 waivers.

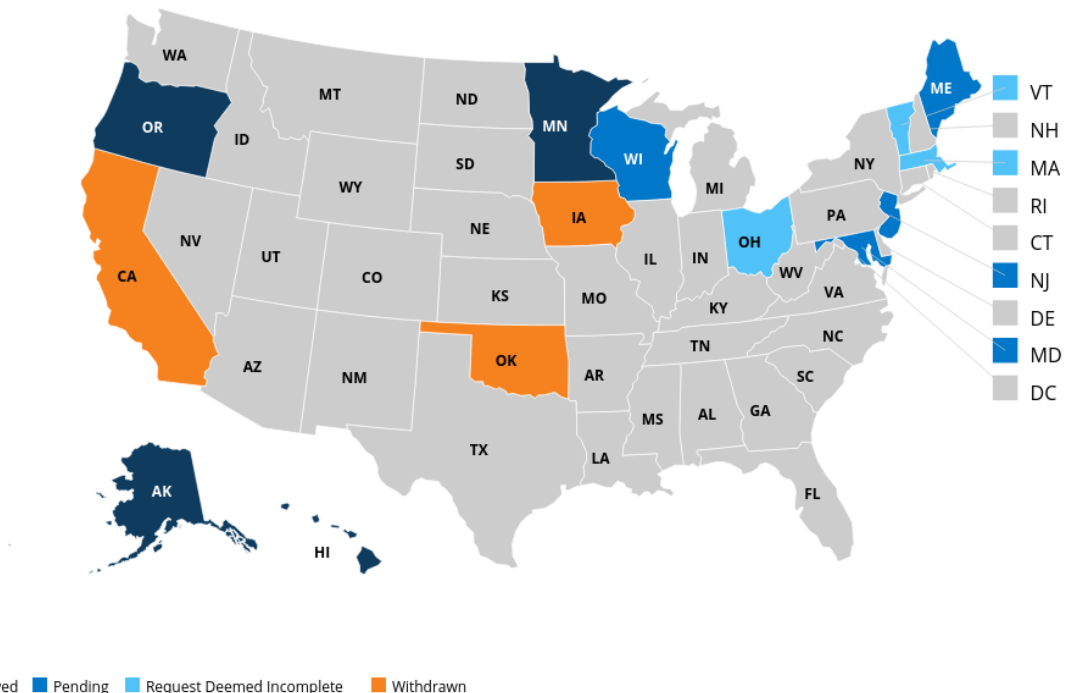
While the ACA provides states with some flexibility to alter certain provisions using 1332 waiver authority, it establishes guardrails that limit the extent of the changes states may make. The current statutory language requires that state waiver applications must demonstrate that the innovation plan will provide coverage that is at least as comprehensive in covered benefits; at least as affordable (taking into account premiums and excessive cost sharing); cover at least a comparable number of state residents; and not increase the federal deficit. The ACA requirements states may seek to waive using Section 1332 authority include:

- Individual and employer mandates;
- Essential health benefits (EHBs);
- Limits on cost sharing for covered benefits;
- Metal tiers of coverage;
- Standards for health insurance marketplaces, including requirements to establish a website, a call center, and a navigator program; and
- Premium tax credits and cost-sharing reductions.

Additionally, states may request an aggregate payment of what residents would otherwise have received in premium tax credits and cost-sharing reductions, referred to as subsidy pass-through funding. States may not waive certain provisions through section 1332, including guaranteed issue, age rating, and prohibitions on health status and gender rating. While states can submit ACA innovation waivers in conjunction with Medicaid waivers (under Sec. 1115 of the Social Security Act), innovation waivers cannot be used to change Medicaid program requirements.

The map below shows the status of 1332 waivers requested by states.

Section 1332 State Innovation Waivers



Updated 7/16/18

Additional details on state waivers are provided below.

Approved Waivers

Alaska	
Description	Allow federal pass through funding to partially finance the state's Alaska Reinsurance Program (ARP). The ARP would fully or partially reimburse insurers for incurred claims for high-risk enrollees diagnosed with certain health conditions.
Date Submitted	December 29, 2016
Date Approved	July 7, 2017
Source	Alaska 1332 waiver application and Waiver approval letter .

Hawaii

Description	Waive ACA Small Business Health Options Program (SHOP) requirements that conflict with the state's Prepaid Health Care Act. Enacted in 1974, the Prepaid Health Care Act requires employers to provide more generous coverage than is required under the ACA. Additionally, waive the requirement that the small business tax credits only be available through the SHOP.
Date Submitted	August 10, 2016
Date Approved	December 30, 2016
Source	Hawaii 1332 waiver application and Waiver approval letter

Minnesota

Description of Waiver	Allow federal pass-through funding to partially finance the Minnesota Premium Security Plan (MPSP), a reinsurance program that would reimburse insurers 80% of claims between \$50,000 and \$250,000. The waiver also seeks federal pass-through funding equal to the amount the federal government would have spent on tax credits and cost sharing subsidies for residents eligible for the state's Basic Health Program, MinnesotaCare if the reinsurance program were not in place.
Date Submitted	May 5, 2017
Date Approved	September 22, 2017. Although the federal government approved pass-through funding for the reinsurance program, it did not approve pass-through funding for BHP, thus providing the state with less federal funding than it had sought.
Source:	Minnesota 1332 waiver application and supporting materials; Letter from Governor Dayton to HHS Secretary Price; Waiver approval letter .

Oregon

Description of Waiver	Allow federal pass-through funding to partially finance the Oregon Reinsurance Program (ORP). The ORP would reimburse insurers 50% of claims between an attachment point (to be determined) and an estimated \$1 million cap.
Date Submitted	August 31, 2017
Date Approved	October 18, 2017
Source	Oregon 1332 waiver application and Waiver approval letter .

Pending Waivers

Maine

Description	Allow federal pass through funding to partially finance reinstatement of the Maine Guaranteed Access Reinsurance Association (MGARA), the state's reinsurance program that operated in 2012 and 2013. The MGARA will reimburse insurers 90% of claims paid between \$47,000 and \$77,000 and 100% of claims in excess of \$77,000 for high-risk enrollees diagnosed with certain health conditions or who are referred by the insurer's underwriting judgment.
Date Submitted	May 9, 2018
Status	Waiver is currently pending at CMS.
Source	Maine 1332 waiver application

Maryland

Description of Waiver	Allow federal pass-through funding to partially finance the Maryland Reinsurance Program. The plan will reimburse insurers 80% of claims between an attachment point that is to be determined and a cap of \$250,000.
Date Submitted	May 31, 2018
Status	Waiver is currently pending at CMS.
Source	Maryland 1332 waiver application

New Jersey

Description of Waiver	Allow federal pass-through funding to partially finance the Health Insurance Premium Security Plan. The plan will reimburse insurers 60% of claims between \$40,000 and \$215,000.
Date Submitted	July 2, 2018
Status	Waiver is currently pending at CMS.
Source	New Jersey 1332 waiver application

Wisconsin

Description of Waiver	Allow federal pass-through funding to partially finance the Wisconsin Healthcare Stability Plan (WIHSP). The WIHSP will reimburse insurers 50%-80% (exact percentage to be determined) of claims between \$50,000 and \$250,000.
Date Submitted	April 19, 2018
Status	Waiver is currently pending at CMS.
Source	Wisconsin 1332 waiver application

Waivers Deemed Incomplete

Massachusetts

Description	Waive cost sharing reduction (CSR) payments to insurers in Massachusetts and allow federal pass-through funding of those CSR payments and any advanced premium tax credit (APTC) payments resulting from lower premiums to partially finance a Premium Stabilization Fund (PSF). The PSF will make payments to insurers that are equivalent to the payments that would have been made through the federal CSR program.
Date Submitted	September 8, 2017
Status	Waiver deemed incomplete on October 23, 2017. CMS indicated in the letter that given the required federal comment period, the waiver could not be implemented for the 2018 coverage year.
Source	Massachusetts 1332 waiver application and CMS letter

Ohio

Description	Waive the individual mandate requirement. Although Congress “zeroed out” the penalty associated with the individual mandate beginning in 2019, it did not eliminate the requirement.
Date Submitted	March 30, 2018
Status	Waiver deemed incomplete on May 17, 2018. In its letter to the state, CMS indicated that the application did not comply with section 1332 requirements.
Source	Ohio 1332 waiver application and CMS letter

Vermont

Description	Allow small employers to enroll directly with health insurance carriers rather than through an online SHOP web portal. The state had adopted the direct enrollment approach for small businesses after the SHOP portal developed by the state failed to launch in 2014.
Date Submitted	March 15, 2016
Status	Waiver deemed incomplete on June 9, 2016. Guidance from CMS issued on April 18, 2016 delayed the required implementation of the SHOP online portal until 2019 and the final Notice of Benefit and Payment Parameters for 2019 permanently eliminated the requirement. As a result, the state is no longer pursuing the waiver.
Source	Vermont 1332 waiver application and CMS letter

Withdrawn Waivers

California	
Description	The state requested approval to provide California Qualified Health Plans (CQHPs) to individuals ineligible to purchase coverage through Covered California, the state's marketplace, due to their immigration status. Individuals purchasing CQHPs would not be eligible for premium tax credits or cost sharing subsidies.
Date Submitted	December 16, 2016
Date Withdrawn	January 18, 2017
Source	California 1332 waiver application ; Letter withdrawing application

Iowa	
Description	The state sought to establish the Iowa Stopgap Measure (ISM) to restructure the coverage offered in the state's individual market and to establish a reinsurance program. • Require participating insurers to offer a single, standard health plan in the ACA-compliant market with an actuarial value of 68%-72% and a deductible of \$7,350/individual and \$14,700/family • Provide flat premium credits based only on income and age in lieu of ACA premium tax credits, and provide premium credits to eligible consumers with income above 400% of poverty who purchase the standard plan. • Continue to provide cost sharing subsidies for individuals with incomes up to 200% FPL by increasing the actuarial value (AV) of the standard plan to 94% for those with income 133%-150% FPL and 83% for those 150%-200% FPL; eliminate cost sharing subsidies for those with incomes 200%-250% FPL • Create an alternative process for applying for premium credits and enrolling in coverage. • Use federal pass through funding to establish a reinsurance program to reimburse insurers for 85% of claims between \$100,000 and \$3 million, and 100% of claims above \$3 million
Date Submitted	August 21, 2017
Date Withdrawn	October 23, 2017
Source	Iowa Stopgap Measure , Iowa Insurance Division, August 21, 2017 and Iowa Stopgap Measure Supplement submitted to CCIIO. Additional information available at: https://iid.iowa.gov/iowa-stopgap-measure . Letter withdrawing application

Oklahoma

Description	The state requested federal pass-through funding to partially finance the Oklahoma Individual Health Insurance Market Stabilization Program (OMSP). The OMSP would reimburse insurers 80% of claims above \$15,000 and up to \$400,000.
Date Submitted	August 15, 2017
Date Withdrawn	September 29, 2017
Source	Oklahoma 1332 waiver application ; Letter withdrawing application