



Trinity Health

State Innovation Waivers:

An Overview of Section 1332 Activity and
Opportunities to Advance People-Centered Health

December 2017

Table of Contents

- **Section 1332 Waiver Landscape**
 - Overview of ACA's Section 1332 Waiver Authority
 - Current Regulatory Requirements for Section 1332 Waivers
 - Intersection Between Medicaid 1115 and Section 1332 Waivers
- **Analysis of Section 1332 Waiver Activity**
 - Overview and Status of 1332 Waivers
 - Status of Section 1332 Activity in Trinity Health States
- **Policy Proposals to Reform Section 1332 Waivers**
 - Congressional, Administration, and Stakeholder Proposals
- **Trinity Health Policy Positions and Development**
 - Section 1332 Policy Principles
 - Next Steps

Executive Summary

- Section 1332 waivers were created in the Affordable Care Act (ACA) to offer states the option to use alternative coverage mechanisms if they could insure as many people, provide comparable levels of coverage and affordability, and not increase the deficit
- Despite encouragement from the current Administration for states to use 1332 waivers, the ACA guardrails and regulations promulgated under the Obama Administration limit state flexibility with only four gaining approval (AK, HI, MN, and **OR**)
- Given current uncertainty in the individual market, states are largely using – or considering using–1332s to implement reinsurance programs that can lower premium costs or increase carrier participation, funded via changes to premium tax credits
- Congress and the Administration are considering changes to Section 1332 waivers to simplify the process, and allow states to combine with Medicaid program waivers (e.g. Section 1115 waivers) to make larger scale coverage changes across markets

Waiver activity is expected to increase as states face challenges in both their individual markets and Medicaid programs. Understanding both 1332 and Section 1115 waiver development will be important to promote alignment with People-Centered Health – and to ensure waivers are used to strengthen coverage, and drive value across the system.

Presentation Objectives

The goals of this presentation are to:

1. Provide an overview of Section 1332 waivers and how they can be used by states
2. Describe state activity on Section 1332 waivers with focus on Trinity Health states
3. Describe the current Federal policy landscape and potential reforms to Section 1332 waivers
4. Identify next steps and opportunities to advance People-Centered Health with Section 1332 waivers

Section I

Section 1332 Waiver Landscape



Section 1332 Waivers Can Advance State-Led Reform

Section 1332 of the Affordable Care Act (ACA) allows states to apply for State Innovation Waivers to make changes to their Marketplaces or other limited ACA provisions beginning in 2017

- Section 1332 waivers can be used to make changes to ACA including:
 - QHP requirements, including Essential Health Benefits (EHBs), plan benefit standards, and other accreditation requirements (e.g. network adequacy)
 - Provisions on subsidies and cost-sharing reductions available through Marketplaces
 - Waiving individual mandate provisions and “shared responsibility” requirements for employers
 - Single risk pool requirements
 - Definition of small group markets

ACA Included Guardrails for Section 1332 Waivers to Protect Coverage Gains

- ACA included four requirements or “guardrails” that states must meet to receive approval for their waiver requests:
 1. **Comprehensiveness**: States must provide coverage that is “at least as comprehensive” as coverage mandated by the ACA
 2. **Affordability**: States must limit consumers’ out-of-pocket obligations to ACA-approved levels
 3. **Coverage**: State waivers must ensure that the state covers at least as many people as the ACA
 4. **Budget Neutrality**: States must also demonstrate that the waiver does not increase the federal deficit
- The assessment of each of the first three guardrails includes an analysis of the effects on the state’s most vulnerable residents, including low-income individuals, the elderly, and those with (or at risk of developing) serious health conditions

These guardrails were intended to set a high bar for states seeking to waive or alter the ACA’s basic coverage constructs. However, policymakers are revisiting these guardrails following criticism that the guardrails are too narrow and are limiting state flexibility and innovation.

Section 1332 Waivers Cannot Change Insurance Market Reforms and Federal Health Programs

- **ACA Provisions that Cannot Be Waived Include:**
 - Prohibition against denying coverage (guaranteed issue and renewal)
 - Prohibition on charging higher rates for pre-existing conditions
 - Ban on annual or lifetime limits
 - Requirement to cover certain preventive medical care with no cost-sharing
 - Requirement to cover adult dependents up to age 26
 - Prohibition on discrimination based on health or disability status, age, race, gender

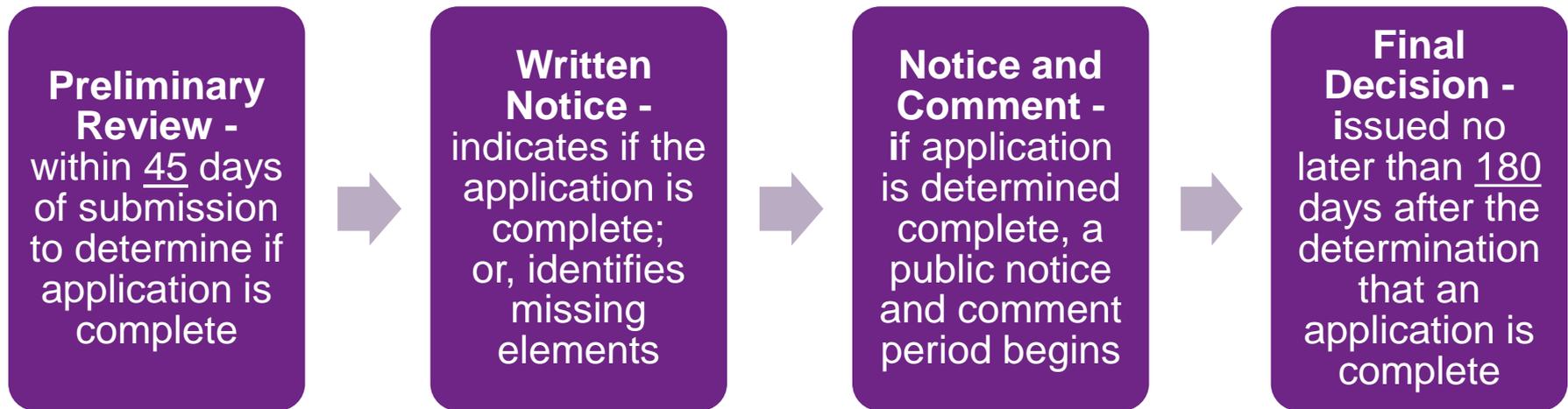
Section 1332 waivers cannot alter Medicaid, Children's Health Insurance Program (CHIP), or Medicare requirements; however states could consider ways to coordinate Section 1332 and Medicaid waivers, including Section 1115.

Section 1332 Regulatory Requirements Remain from Obama Administration, But Changes Likely

- **In 2012, the Obama Administration issued a final regulation on the 1332 waiver process. Key application elements include (but are not limited to):**
 - The list of provisions the state seeks to waive, including the rationale for the specific requests
 - Data, assumptions, targets, and other information to determine that the proposed waiver will meet the four guardrails in the law
 - Actuarial analyses and actuarial certifications to support estimates that the waiver will comply with the comprehensive coverage, the affordability, and the scope of coverage requirements
 - A detailed 10-year budget plan that is deficit neutral to the Federal government
 - A detailed analysis of the impact of the waiver on health insurance coverage in the state
 - Enacted state legislation providing authority to implement the proposed waiver
 - A detailed plan as to how the state will implement the waiver, including a timeline
- **In 2015, CMS issued additional guidance on how the guardrails would be assessed in the review of waiver applications**
- **In 2017, CMS issued a letter to the states encouraging the use of 1332 waivers and an application checklist including specific materials for High-Risk Pool/State-Operated Reinsurance Program Applications**
 - However, the new Administration has not made regulatory changes and has approved a limited number of waivers

Section 1332 Application Review Process Requires Interdepartmental Coordination

- The Departments of Health and Human Services (HHS) and Treasury or the Internal Revenue Service (IRS) review and approve Section 1332 applications, which requires greater coordination within the Federal government than waivers in the Medicaid space
- Waivers are approved for a 5-year period, but must demonstrate budget neutrality to the Federal government over a 10-year period



Prior to submitting a 1332 waiver application to federal agencies, states are required to complete certain initial procedural steps for the waiver application at the state level. These include enacting state authorizing legislation and ensuring a public comment opportunity (including public hearings) on a draft application.

Intersection Between Section 1115 and 1332 Waivers Could Lead to Large Scale Reform

- **State waivers are an important vehicle for reform under the new Administration and can drive broad-based changes**
 - Both Section 1332 and Section 1115 waivers give states flexibility to test reforms or alternative approaches to coverage
 - Section 1115 waivers permit changes to state Medicaid programs not otherwise permitted under federal Medicaid law
 - CMS Administrator Verma has experience working with state Medicaid programs to design and implement program changes, including using 1115 waivers
 - Both Section 1332 and 1115 waivers may be used to implement structural and financing reforms in absence of federal reform
- **Under current regulation (45 CFR 155.1302) and guidance states may submit a single application for both a 1332 and 1115 waiver; however, the application must meet the requirements for demonstrations under each section separately**
- **Legislative and/or regulatory changes could allow for combined 1332/1115 waivers to move forward**
 - Congress could create new flexibility for states seeking to test changes across markets
 - The Administration could relax deficit neutrality requirements for individual waivers so savings in one program could offset costs in another

Stakeholders and policymakers are actively exploring greater flexibility for 1332s and allowing them to be combined with Section 1115 waivers. This could create large-scale changes in Marketplace and Medicaid markets.

Section II

Analysis of Section 1332

Waiver Activity



States Primarily Using 1332s to Stabilize Individual Markets via Changes to Federal Premium Assistance

- **Currently, states are mainly using Section 1332 waivers to stabilize premiums, and to support or expand coverage – especially in response to current Federal policy on the ACA**
- If a state reduces federal spending on premium tax credits, CSRs, or small business tax credits relative to what they would have been without the waiver, the state may receive the difference in the form of “pass through” payments to fund its waiver plan

Examples of Changes States Have Sought with Section 1332 Waivers

Financial Assistance to Consumers

- Changes to premium subsidies
- Changes to Cost-Sharing Reductions (CSR)

Stabilizing Premiums

- Reinsurance
- High-risk Pools
- Standardized plans

Employer Markets

- Changes to SHOP
- Changes to Employer Requirements

Expanding Coverage

- Unauthorized Immigrants

States Are in Various Stages of 1332 Waiver Process

State Authorizing Legislation

- States are required to pass authorizing legislation before submitting a federal waiver application
- To date, 14 states have passed authorizing legislation: AK, **CA**, HI, KY, ME, **MA**, MN, NH, **OH**, OK, **OR**, RI, TX, and VT
- **IA** filed a waiver application without authorizing legislation
- Legislation passed Assembly in **NY**; did not pass in **GA**, **MD**; vetoed in MT and NV

Waiver Application Submission

- State must file an application with HHS and possibly Treasury including assumptions on budget neutrality, expected impact on coverage, and state-enacted legislation to implement waiver
- To date, 9 states have submitted waiver applications: AK, **CA**, HI, **IA**, **MA**, MN, OK, **OR**, and VT

Waiver Application Status

- Approved: AK, HI, MN, **OR**
- Withdrawn: **CA**, **IA**, OK
- Pending: NH
- In Development: **ID**
- Rejected: **MA**, VT

Note that bold lettering indicates Trinity state.

Early Waivers Approvals Aim to Stabilize Individual Market or Maintain pre-ACA Coverage Requirements

- **1332 waiver approvals in non-Trinity Health states focused on reinsurance, and maintaining pre-ACA state coverage requirements**
- **States are moving forward with two approaches for reinsurance**
 - Condition-based: Alaska used the 1332 waiver to fund the Alaska Reinsurance Program (ARP) that covers claims in the individual market for those with one or more of the 33 identified high cost conditions
 - Cost-based: States like **Oregon** and Minnesota established reinsurance programs that share in the costs of coverage for consumers that reach a certain cost-level or attachment point

State	Status	Waiver Elements
Alaska	Approved – 2017	Condition-based reinsurance program in individual market
Hawaii	Approved – 2016	Maintains existing employer premium assistance program in lieu of SHOP
Minnesota	Approved – 2017	Operates cost-based reinsurance program in individual market

Note that bold lettering indicates Trinity state.

Broad Ranging 1332 Waiver Activity in Trinity Health States, But Only Oregon Approved

State	State Legislation	Main Goal of Waiver	Financing Structure	Waiver Status
California	Enacted	<ul style="list-style-type: none"> Allow undocumented individuals to purchase coverage in Marketplace 	No funding required	Withdrawn
Idaho	Drafted	<ul style="list-style-type: none"> Extend coverage to U.S. citizens with incomes below 100% FPL Create a state high risk pool in Medicaid for those up to 400% FPL w/ chronic conditions 	Subsidy eligible coverage expansion funded through savings from creating a high risk program in Medicaid, which is projected to lower Marketplace premiums	Open for State Comment
Iowa	No	<ul style="list-style-type: none"> Cost-based reinsurance program in individual market New tax credit based on age and income Eliminates CSRs Direct enrollment via insurers, not Marketplace Creates single standard silver plan 	Financing for reinsurance program comes from pass through savings from changes to federal premium tax credits	Withdrawn
Massachusetts	Enacted	<ul style="list-style-type: none"> Replaces CSRs with stabilization fund Implements state requirement for employers to provide coverage Permits those without ESI to buy exchange plans with pre-tax dollars 	State proposed to take the difference between 1) increase in premiums from elimination of CSRs and 2) premiums if CSRs continued in order to fund direct payments to insurers	Rejected
Oregon	Enacted	<ul style="list-style-type: none"> Cost-based reinsurance program in individual market 	Financing for reinsurance program from changes to tax credits, assessment on insurers and state funding	Approved

Iowa Application Tested Current Limits of 1332 Flexibility

- Iowa was facing significant individual market issues for 2018 including “bare counties” and sought “emergency regulatory relief” for a one-year period, filing a Section 1332 waiver on June 12, 2017
- However, the waiver application would likely have violated the four guardrails test and had other procedural issues. For instance:
 - CMS, stakeholders raised questions about the financial assumptions in the waiver
 - Costs may have increased for low-income enrollees
 - State did not provide sufficient time for public comment and input
- In October, after discussions and revisions to the waiver, Iowa withdrew its application

For policymakers seeking to make changes to Section 1332 requirements, Iowa may be an example of the construct restricting state innovation and flexibility. On the other hand, the outcome, underscores the impact of the guardrails in the law on maintaining key parts of the ACA.

Idaho Developing a “Dual” 1332/1115 Waiver Approach

- **Idaho did not expand Medicaid leaving 78,000 residents with incomes under 100% FPL currently uninsured**
- Idaho proposes to use a 1332 waiver to allow U.S. citizens below 100% FPL to purchase coverage through the Marketplace and be eligible for tax credits and CSRs
- Idaho is simultaneously developing a Section 1115 Medicaid waiver to cover people with complex needs up to 400% FPL, and funding a state reinsurance pool program
- The 1332 draft waiver application projects reduced tax credit costs through lower Marketplace premiums from moving high cost enrollees into Medicaid
- Idaho may be the first state to submit a “dual” 1332/1115 approach that would likely require savings from one program (i.e. the Marketplaces) to offset potentially higher costs in another program (i.e. Medicaid)

Idaho’s draft waiver application presents data indicating that the waiver application would expand coverage overall, lower Marketplace costs, and create-savings for the Federal government across programs. However, current regulatory requirements would likely have to change for the state to gain approval.

Section III

Policy Proposals to Reform Section 1332 Waivers



Congress Actively Considering Changes to Section 1332, Creating a Fluid Policy Environment

- **Senate ACA Repeal Bills Included Changes to 1332s**
 - Better Care Reconciliation Act (BCRA): Eliminated coverage guardrails in ACA, and required HHS Secretary to approve waivers that did not add to the deficit, eliminating Federal discretion to reject harmful waivers
 - Health Care Freedom Act: Could have weakened guardrails and consumer protections and required HHS to approve waivers that met guardrails
- **Senate Committees Currently Considering Sweeping 1332 Reforms**
 - HELP: Process changes, including shortening the approval period, allowing states to file “me too” applications based on other approvals, not requiring state legislative action, and broadening budget neutrality to combine Medicaid Section 1115 and 1332 waivers
 - SFC: Legislative draft includes process changes, loosens ACA guardrails, and broadens budget neutrality to combine Section 1115 and 1332 waivers

Legislative reforms to Section 1332 could accompany market stabilization efforts. Changes could expedite waiver approval, weaken existing guardrails, and allow states to combine Medicaid Section 1115 and 1332 waivers.

Administration Has Signaled Greater State Flexibilities on Waivers, But Action Limited

- **CMS' 1332 activity under Trump Administration has encouraged use of waivers and emphasized the need to increase flexibility**
 - In an April 2017 letter to states, CMS stated the Agency is seeking ways to provide more flexibility, and create opportunities for state-based innovation
 - In May 2017, CMS released a 1332 “checklist” for waiver applications
- **Despite uncertainty on the ACA, CMS encouraged states to pursue 1332 waivers that include “high-risk pool/state-operated reinsurance programs”**
 - CMS cited Alaska’s reinsurance program in particular, with additional states following suit since
- **Administration could revise 2012 regulations, as well as 2015 guidance**
 - Changes could create mechanisms for combined 1332 and 1115 waivers, relax budget neutrality requirements across programs, and expedite the approval process

Current uncertainty on future of CSR funding could impact waiver applications and approvals.



Recent Stakeholder Activity Calls for Expediting Waiver Process

- **National Governors Association.**¹ Established the Governors' Bipartisan Health Reform Learning Network in early 2017— discussed state authority and flexibility regarding 1332 Waivers
 - Federal government should simplify the 1332 waiver approval process
 - States should be allowed to receive coordinated waivers across Medicaid Section 1115 and Section 1332 waivers
- **Bipartisan Policy Center.**² “Future of Health Care” Panel of experts issued a number of recommendations on health reform, including changes to Section 1332
 - The panel recommended shortening the application review time from 180 to 90 days
 - Congress should require HHS to approve waivers that meet the ACA statutory guardrails
- **National Association of Insurance Commissioners.**³ Expressed support for 1332 waiver changes in a bipartisan ACA reform bill
 - The NAIC sent a letter to support changes to the Section 1332 waiver process that would reduce administrative obstacles and provide greater flexibility for states
 - However, the Consumer Representatives of the NAIC sent a letter to the NAIC Working Group that is developing recommendations on changes to 1332 waivers to encourage continued emphasis on coverage protections for consumers
- **Convergence- Center for Policy Resolution.**⁴ Roundtable recommendation to modify Section 1332 to allow states to integrate federal funds used to cover low income children, adults, and families under Medicaid and CHIP and private insurance to improve coverage

[1. Shared Priorities from the Governors' Bipartisan Health Reform Learning Network, 6/20/2017](#); [2. Future of Health Care: Bipartisan Policies and Recommendations, 8/30/2017](#); [3. NAIC Articulates Support for Bipartisan Health Bill, 10/20/2017](#) and [Consumer Representatives' Comments on Section 1332 Waiver Requirements, 10/27/2017](#); [4. A Bipartisan Answer to “What Now?” for Health Reform, 8/8/2017](#)

Section IV

Trinity Health Policy Positions and Development



Trinity Health's Commitment to a People-Centered Health System Guides Advocacy

- Trinity Health's "Essential Elements" Principles can guide policy development and engagement at the state and federal levels

Affordable

Well-functioning, stable insurance markets

Access to Medicaid up to 138% FPL, assistance to 400% FPL

Shared responsibility for all stakeholders

Secure

Continuous, stable coverage across programs, life changes

Benefit designs that avoid high-deductible models

Safeguards against annual or lifetime caps on coverage

High-Functioning

Uniform, core benefits package

Simple tools to consumers to choose between coverage options

Strong and innovative safety net