



July 1, 2019

Administrator Verma
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9936-NC2
P.O. Box 8013
Baltimore, MD 21244-1850

RE: CMS-9936-NC2 - Request for Information Regarding State Relief and Empowerment Waivers

Submitted electronically via <http://www.regulations.gov>

Dear Administrator Verma,

Trinity Health appreciates the opportunity to respond to the *Request for Information Regarding State Relief and Empowerment Waivers*, solicitation by the Department of Health and Human Services and the Department of the Treasury (the Departments). Trinity Health is committed to public policies that support better health, better care, and lower costs to ensure affordable, high quality, people-centered care for all. As such, Trinity Health would like to offer comments that aim to ensure comprehensive and affordable coverage for all, which can in part be achieved by stabilizing the health insurance marketplaces.

Trinity Health is a national Catholic health care delivery system with a steadfast mission to be a transforming and healing presence within our communities. Trinity Health includes 94 hospitals as well as 109 continuing care locations that include Programs of All-Inclusive Care for the Elderly (PACE), senior living facilities, and home care and hospice services. Committed to those who are poor and underserved, Trinity Health returns \$1.1 billion to our communities annually in the form of charity care and other community benefit programs. We have 35 teaching hospitals with graduate medical education (GME) programs providing training for more than 2,000 residents and fellows in 184 specialty and subspecialty programs. We employ approximately 133,000 colleagues, including more than 7,800 employed physicians and clinicians, and have more than 15,000 physicians and advanced practice professionals committed to 23 Clinically Integrated Networks (CINs) that are accountable for approximately 1.5 million lives across the country through alternative payment models (APMs). Further, we have provided care for more than one million patients who have gained Medicaid coverage since 2014 and we celebrate their health improvements and see the economic benefits of this coverage in our communities.

The request for information (RFI) states that the Departments are seeking feedback on programs and concepts that states could consider as they develop Section 1332 State Relief and Empowerment Waivers. Specifically, the Departments are seeking input on waiver concepts that meet the 1332 waiver guardrails and concepts that could be pursued independently or alongside other waivers, state proposals or policy changes.

While Trinity Health supports state flexibility and has seen states in our footprint implement successful reinsurance programs through Section 1332 waivers, it is imperative that any programs implemented through Section 1332 waivers aim to stabilize the current health insurance marketplaces and their risk pools. **As such, we urge the Departments to work with states to use 1332 waivers to fortify the existing marketplaces and qualified health plans (QHPs) and to ensure that consumers maintain access to comprehensive coverage that includes the 10 essential health benefits (EHBs).**

Trinity Health believes that access to affordable, quality care is a basic human right. We believe that efforts to improve the health care system and reduce the cost of care should be guided by principles that guarantee the delivery of affordable, high-functioning coverage and care for all, better the health of populations, and improve community health and well-being. We support state innovation and have worked with states to implement innovative policies, including through waivers, to strengthen access to affordable, comprehensive coverage, to drive competition in the marketplace and support consumer choice and beneficiary engagement in ways that best meet the state's unique needs.

Trinity Health believes in health care coverage for all—it is necessary for people to use the health care system effectively and efficiently as this leads to increased accountability, lower costs, a healthier population, and a more vibrant economy. As such, our comments in response to this RFI focus on ensuring continued access to high-functioning insurance marketplaces and promoting enrollment in comprehensive, affordable health insurance. We offer the following main recommendations:

- 1. Section 1332 waivers should be used to stabilize and strengthen the marketplaces and should not erode current Qualified Health Plan (QHP)- level coverage options.**
- 2. Section 1332 waivers should ensure and maintain minimum standards for coverage and incorporate guardrails, such as the 10 EHBs and cost-sharing protections, and should promote consumer health and well-being.**
- 3. As states develop and implement Section 1332 waivers, it is essential to ensure transparency, stakeholder input, and robust evaluations.**

Below we present our recommendations in more detail.

- 1. Section 1332 waivers should be used to stabilize and strengthen the marketplaces and should not erode current Qualified Health Plan (QHP)- level coverage options.**

Trinity Health views Section 1332 waivers as an important tool states can use to strengthen their health insurance marketplaces through increasing competition and supporting enrollment in affordable and comprehensive health insurance coverage. Section 1332 of the Patient Protection and Affordable Care Act (ACA) was established to permit states the flexibility to develop innovative approaches to ensuring access to affordable, high-quality coverage while maintaining baseline protections established in the ACA.

We urge the Departments to approve 1332 waivers that stabilize the marketplaces established under the ACA. Section 1332 waivers should also strengthen state risk pools because they are essential to maintaining equity in access to comprehensive, affordable coverage across all residents. We also urge the Departments to approve waivers that fortify the QHPs offered through the marketplaces. It is imperative that programs implemented through Section 1332 waivers do not erode the individual marketplaces and that they support not only access to, but enrollment in, coverage.

The majority of states that have used Section 1332 waivers have implemented reinsurance programs, which have been effective in bringing down premiums, maintaining competition and encouraging payer participation, and driving enrollment in coverage. As such, we support state use of the CMS' *Risk Stabilization Strategies* concept to implement reinsurance programs. To date, states have taken a range of approaches and, in some cases paired 1332 with other policies to stabilize their marketplaces. For example:

- **New Jersey** is implementing a reinsurance program, which started in 2019, in which the state reimburses plans for 60 percent of claims between \$40,000 and \$215,000. New Jersey has paired this program with a state individual mandate, which it credits with helping lower premiums. In 2018, premiums only rose by 5.8 percent, on average, compared to the

anticipated 12.6 percent absent the state's mandate. Together, the state notes that the reinsurance program and individual mandate reduced average rates by 9.3 percent in 2019.¹ Given this early evidence, we encourage states to explore implementing a reinsurance program alongside a state individual mandate.

- **Maryland's** reinsurance program, under which the state reimburses issuers for 80 percent of claims over a certain threshold up to \$250,000, launched in January 2019 and led to a 13.2 percent decline in premium costs in the same year. Although the state is in the first year of its program, it expects to see more low-risk individuals enroll in coverage.² Maryland also passed a law in 2019, which establishes a process through which uninsured residents can request that the state's marketplace determine their eligibility for coverage using their tax return. Residents will either be automatically enrolled in Medicaid or will be contacted by the marketplace for enrollment support. Maryland's law demonstrates other efforts states can take—in conjunction with 1332 waivers—to support enrollment and marketplace stabilization.
- **Oregon** implemented a reinsurance program to reimburse insurers for 50 percent of claims above a certain threshold up to approximately \$1 million. As a result of the program, which launched in January 2018, the state saw an 8 percent and 9 percent reduction in premium rates in 2018 and 2019, respectively, and shored up insurer participation in the marketplace.³
- **Alaska** was the first state to gain approval of a 1332 waiver to use federal pass through funding to finance the state's reinsurance program, which reimburses issuers for a portion of claims associated with treating one of 33 high costs conditions. The state credits the program with preventing its last issuer from leaving the marketplace and in 2017—the first year of state's program—premiums only rose 7 percent, instead of the 40 percent proposed before the program went into effect.⁴

Trinity Health urges the Departments to continue to work with states to use 1332 waivers to implement reinsurance programs, given the growing evidence on the positive impacts of reinsurance programs on lowering premiums, maintaining issuer participation in the marketplaces and supporting access to coverage.

2. Section 1332 waivers should ensure and maintain minimum standards for coverage and incorporate guardrails, such as the 10 EHBs and cost-sharing protections, and should promote consumer health and well-being

Trinity Health appreciates the Department's efforts to outline potential 1332 waiver concepts but, as outlined above, believes that several of the waiver concepts could erode the marketplaces and impede individuals from enrolling in comprehensive coverage or receiving needed care. **To this end, states pursuing the four waiver concepts outlined by CMS in November 2018 should ensure waivers include certain principles and guardrails, do not destabilize the marketplaces, and prioritize reinsurance programs.**

Trinity Health supports state innovation and flexibility and has worked with states to implement innovative policies that meet their unique needs and expand coverage and access, while controlling or reducing costs. While certain flexibilities are permitted under Section 1332 waivers, we strongly recommend that the Departments not approve Section 1332 waivers that could limit access to comprehensive, affordable, high-value coverage and care. We believe that Section 1332 waivers should ensure baseline standards for coverage and access. We strongly recommend that, as the Departments work with states to develop and approve Section 1332 waivers, they ensure that waiver programs include the following components, at a minimum.

¹ <https://nj.gov/governor/news/news/562018/approved/20180907a.shtml>

² Ibid

³ [State Reinsurance Programs Lower Premiums and Stabilize Markets — Oregon and Maryland Show How](#), NASHP

⁴ <https://www.commonwealthfund.org/blog/2018/states-take-lead-reinsurance-stabilize-aca-marketplaces>

Essential Health Benefits

We strongly believe that comprehensive coverage includes the 10 EHB categories defined in the ACA and that all health coverage should ensure access to these benefits, at a minimum.

We are concerned that, under several of the waiver concepts outlined in CMS' November 2018 [discussion paper](#), individuals would be able to enroll in plans that provide less-comprehensive benefits, which could result in enrollment in coverage that does not provide access to essential or high-value services.

Affordable Coverage and Cost-Sharing

We support policies that foster personal engagement and promote self-management and shared decision-making - and urge the Departments to ensure that Section 1332 waiver programs include affordable coverage and a cost-sharing structure that supports access to and appropriate utilization of services and does not result in delayed or avoided care. Waivers must guarantee that plans offer affordable coverage and cost sharing to ensure equity in access to and continuity of care across income levels. This is essential to supporting coverage for all and ensuring no one is left uninsured.

We are concerned that CMS' *State-Specific Premium Assistance* waiver concept could permit states to design state-specific subsidy structures that include cost-sharing at levels that serve as a barrier to care or shift significant financial burden to consumers. Any state-specific premium assistance program must protect against excessive out-of-pocket health care costs that place a financial burden on patients. This is particularly important for vulnerable or low-income beneficiaries who may forgo necessary preventive or other care due to high cost-sharing. We also have concerns with CMS' account-based subsidy concept, as research has found that health savings accounts are associated with financial burden—especially for low-income populations—and are associated with delaying or forgoing care.⁵

Robust Plan Options

We strongly recommend that CMS guarantee that all plan options offered under a 1332 waiver provide coverage at least as generous as current bronze level QHP standards and that marketplace plans continue to align with QHP metal levels. Section 1332 waivers should be designed to support marketplaces with a range of QHPs as this preserves consumer choice based on premium costs and anticipated utilization, while still guaranteeing access to comprehensive coverage. As such, we recommend that no plan be offered in the marketplaces that has less value than bronze plans currently have. Second, we recommend that marketplaces maintain use of the QHP metal levels as this will allow consumers to make informed decisions about the value of plan options. It is also imperative that all plan offerings incorporate the baseline standards discussed above, including offering EHB and appropriate cost-sharing.

Further, some of the waiver concepts developed by CMS would allow states to offer plans that do not meet the standards outlined above and would weaken the marketplaces. Trinity Health believes that:

- Association health plans (AHPs), limited duration plans and other plans that do not meet the baseline standards outlined above will negatively impact state marketplace risk pools, which could drive up premiums and further erode the marketplaces.
- High-deductible health plans (HDHPs) should not be structured in a way that discourages use of high-value services. If HDHPs are used, they should be designed to ensure that consumers have access to essential, high-value services (e.g. primary care and non-single source generic drugs) regardless of whether their deductible has been met.

⁵ [Nearly Half of Families In High-Deductible Health Plans Whose Members Have Chronic Conditions Face Substantial Financial Burden](#) (2011), Health Affairs. [Delayed and Forgone Care for Families with Chronic Conditions in High-Deductible Health Plans](#) (2012), Journal of General Internal Medicine. [Value-Based Insurance Design: A "Clinically Sensitive, Fiscally Responsible" Approach to Mitigate The Adverse Clinical Effects of High-Deductible Consumer-Directed Health Plans](#) (2007), Journal of General Internal Medicine

- High-risk pools, if not structured properly, could result in substantial financial burden being placed on consumers. It is important that any state that pursues a high-risk pool through a 1332 ensures the program does not destabilize its marketplace by decreasing competition and shifting more costs and financial burden to consumers—especially those that are lower-income and vulnerable.

Guardrails to Ensure Access and Choice

Further, as states and CMS develop waivers and policies simultaneously, it is imperative to consider and advance development of programs and policies that support the following:

- Policies and programs that are coordinated and complementary and do not result in access barriers to affordable, comprehensive coverage—especially among low-income and vulnerable populations.
- Competition and payer participation within markets, which is necessary to stabilize risk pools across markets.
- Actuarial integrity of risk pools, which is important to appropriately incentivize providers to manage care as a result of higher levels of predictability.
- Guard against decreases in reimbursement that could negatively impact access to care. Specifically, states should evaluate the impact of proposed programs on provider payments to ensure they do not result in cost shifting.

3. As states develop and implement Section 1332 waivers, it is essential to ensure transparency, stakeholder input, and robust evaluations.

Programs implemented via Section 1332 or other waivers, could have a significant impact on consumer access to comprehensive coverage and care, consumer cost-sharing and financial responsibility, and state and Federal spending. Development of waivers should be transparent, incorporate stakeholder input and include evidence-based rationale and data to support the proposed approach outlined in the waiver. These aspects are important for development of Section 1332 waivers both independently and in tandem with Section 1115 Medicaid waivers or other state and federal policies that could impact access to and comprehensiveness of coverage.

States and CMS must ensure transparency as they develop waiver applications, including sufficient opportunity for public review and comment. This is especially important given the findings of a recent Government Accountability Office (GAO) analysis of Section 1115 Medicaid waivers, which found insufficient opportunity for public comment or lack of analysis from states on the impact of proposed policies on beneficiary enrollment. Waiver proposals should also include evidence and data to support the state’s rationale for the proposed waiver. Waiver applications must also include comprehensive budget projections that support transparency with respect to the estimated impact of the waiver and its budget neutrality. Development and refinement of waivers should also include input from stakeholders who can offer different perspectives on the impact of the proposed waiver on beneficiaries and patients, access to coverage and affordability, and the impact on the state’s health system and providers.

Evaluations are also a critical component of waiver policy. **Evaluations of Section 1332 waivers should be robust, transparent and grounded in data.** Given that waivers permit states to test flexibilities not otherwise permitted under federal law, it is essential that evaluations of waivers are:

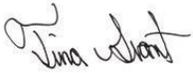
- Designed to effectively assess the impact of waiver policies and programs on beneficiaries as well as states, the federal government and other stakeholders, including providers.
- Constructed to effectively and accurately evaluate what is being tested under a waiver.
- Consistent across states and performed on a regular basis to ensure there is opportunity for comparison across states and that they are being monitored to ensure they are achieving their intended goals.

Conclusion

Trinity Health believes in state innovation and supports development of policies that ensure equity in access to comprehensive, affordable health care while meeting a state's unique needs. To this end, we view Section 1332 waivers as an important tool states can use to stabilize their health insurance marketplaces and shore up enrollment in comprehensive coverage options that include the 10 EHB categories and do not place a significant financial burden on consumers. However, as outlined above, we believe a number of guardrails must be in place as states continue to develop 1332 waivers alone or in conjunction with other waivers or policies.

Trinity Health thanks CMS for the opportunity to respond to this request for comments. Our recommendations reflect our strong interest in public policies that support better health, better care, and lower costs to ensure affordable, high quality, and people-centered care for all. We look forward to working with you to advance these goals. If you have questions on our comments, please feel free to contact me at granttw@trinity-health.org or 734-343-1375.

Sincerely,



Tina Weatherwax Grant, JD
Vice President, Public Policy and Advocacy
Trinity Health