

# Section 1332 Waivers: Washington state's Market Stability Project

July 27, 2017

## **I. What is a section 1332 waiver and why was it included in the ACA?**

- a. Allows states to ask the Federal Government to modify certain parts their implementation of the ACA.
- b. It was included to give states the option to come up with their own version of health care reform, but not until January 1, 2017.

## **II. What provisions of the ACA can and cannot be waived under a section 1332 waiver?**

- a. **CAN** be waived: Individual and employer mandate; how premium subsidies and cost-sharing reduction funds are used to impact affordability; Exchange and qualified health plan requirements.
- b. **CANNOT** be waived: Consumer protections preventing denial of coverage or increased premiums for people with pre-existing conditions; how premiums are set; single risk pool requirements.

## **III. What test must be met for approval of a section 1332 waiver?**

- a. There are several “guardrails” under current requirements.
- b. Bottom line – The waiver must:
  - i. Cover at least as many people,
  - ii. With coverage that is at least as affordable,
  - iii. And, as comprehensive, as coverage would be under the Exchange;
  - iv. Does not increase the federal deficit.

## **IV. Why are we thinking about a section 1332 waiver now?**

- a. As a way to get federal funding to help pay for a market stability program -- NOT necessarily to fully fund a program.
- b. Concept of “pass through” funding:
  - i. **IF** we can meet the guardrails above; and
  - ii. **For reinsurance:**
    - 1. **IF** our analysis shows that a policy will significantly reduce the rate of increase in individual health insurance premiums (especially the 2<sup>nd</sup> lowest cost silver plan),
    - 2. **THEN** we ask for the federal “savings” in premium subsidies due to lower premiums to be “passed through” to the state to help pay for a market stability program.

iii. **For a state offered option:**

1. **IF** we think we can offer the coverage for less than health plans traditionally offered through the Exchange would cost,
2. **THEN** we ask that premium subsidies and cost sharing reduction payments that would have been paid be given to the state to finance the coverage that is offered.

**V. What's the process to apply for a section 1332 waiver?**

- a. It's a heavy lift.
- b. A waiver application must include:
  - i. Actuarial analysis
  - ii. Economic analysis
  - iii. Implementation timeline
  - iv. Ten-year budget plan.
- c. Before an application is submitted to CMS, public comment period, hearings and tribal consultation.
- d. The legislature **MUST** authorize final submission and implementation of the waiver to CMS.
- e. The state **MUST** show that state funding is available to pay for the program, and that approval of the waiver will offset part of the cost of the program.
- f. Lengthy federal review process – States have asked CMS to develop an expedited process. CMS has shown willingness to do this in order to maintain market stability.

**VI. Are other states doing this?**

- a. Alaska – conditions-based reinsurance – approved.
- b. Minnesota – claims-based reinsurance – submitted, application has been determined to be “complete”.
- c. Oklahoma, New Hampshire, Maine, Oregon all are varying stages of developing waiver proposals.
  - i. Of these, only Oklahoma is going beyond reinsurance to ask for substantial changes to their system.

**VII. Helpful Resources:**

- a. RWJF 1332 waiver webinar slides, prepared by Manatt: [http://www.statenetwork.org/wp-content/uploads/2017/04/1332-Waiver-Webinar-4-12-17\\_Final.pdf](http://www.statenetwork.org/wp-content/uploads/2017/04/1332-Waiver-Webinar-4-12-17_Final.pdf)
- b. CMS 1332 waiver checklist: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf>