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# HEALTH REFORM POLICY BRIEF

October 18, 2017

## 1332 STATE INNOVATION WAIVERS

On Jan. 1, 2017, State Innovation Waivers (also known as 1332 waivers) became available for use by states as a mechanism for waiving certain provisions of the Affordable Care Act (ACA). These waivers, authorized by Section 1332 of the ACA and overseen by the secretaries of Health and Human Services (HHS) and the Treasury, give states broad flexibility to restructure and customize their individual health insurance markets for up to five years at a time.<sup>1</sup>

In March 2017, HHS Secretary Tom Price sent letters to state governors encouraging them to take advantage of 1332 waivers, particularly those that would implement **high-risk pools**<sup>2</sup> or **reinsurance**<sup>3</sup> programs, in order to “lower premiums for consumers, improve market stability, and increase consumer choice.”<sup>4</sup> Secretary Price also highlighted the ability of states to collect pass-through funding if their 1332 waiver program results in reductions to federal Marketplace spending. In response, a number of states, including Alaska, Minnesota, and Oregon, have submitted 1332 waiver applications for federal approval in order to create reinsurance programs, although only Alaska’s and Minnesota’s applications have been approved so far. In addition, Hawaii has an approved 1332 waiver and Vermont and Massachusetts have pending 1332 waiver applications, with all three states seeking to use their waivers for programs other than reinsurance.<sup>5</sup>

This brief provides an overview of 1332 waivers, state examples of 1332 waivers to support reinsurance programs, information on other 1332 waivers, and options for Georgia. A summary table detailing active and approved 1332 waivers is at the end of this brief.

### WHICH ACA REQUIREMENTS CAN 1332 WAIVERS ALTER?

- Essential health benefits
- Community rating
- Marketplace metal tiers of coverage
- Premium tax credits
- Cost-sharing reduction subsidies
- Marketplace structure

### 1332 Waiver Basics

1332 waivers allow states to alter key ACA individual health insurance market requirements, so long as the proposed innovation provides insurance coverage that is at least as comprehensive and affordable as it would be without a waiver, covers a comparable number of state residents, and is cost-neutral to the federal government. The waiver application must also include:<sup>6</sup>

- Supporting state legislation that provides authority for the state to implement the proposed waiver
- Provisions of the ACA that the state seeks to waive
- Rationale for the specific requests
- Analysis of the impact of the waiver on health insurance coverage in the state
- A detailed plan as to how the state will implement the waiver, including a timeline

## 1332 Waivers for Reinsurance

Alaska's experience serves as an example for states that seek to use 1332 waivers to support reinsurance programs and stabilize their health insurance markets. In 2016, after Alaska's Marketplace was left with only one health insurer, the state sought a way to keep that insurer from exiting the market or significantly raising premiums.<sup>7</sup> The state created the Alaska Reinsurance Program (ARP; operational since January 2017), which helped to cover the cost of claims in the individual market for people with one or more of 33 identified high-cost conditions, including cystic fibrosis, HIV/AIDS, and multiple sclerosis.<sup>8</sup> Due to the ARP, Alaska's Marketplace stabilized and 2017 rates were only 7.3 percent higher than 2016 rates.<sup>9</sup>

### ALASKA'S 1332 WAIVER

- Approved July 11, 2017
- Waives ACA § 1312(c)(1) community rating and single risk-pool requirements
- Supports state-run reinsurance program
- Utilizes federal pass-through dollars to fund 80% of reinsurance program costs
- State insurance tax funds remaining 20% of program costs

In July 2017, the federal government approved Alaska's use of a 1332 waiver to support the ARP. Alaska's 1332 waiver sets aside the ACA's community rating requirement that all individual market enrollees be part of a single risk pool (ACA § 1312(c)(1)) and makes substantial funding changes to the program.<sup>10</sup> Prior to the waiver, Alaska funded the ARP through a \$55 million one-year appropriation from fees collected on insurance plans.<sup>11</sup> Under the approved 1332 waiver, the federal government has agreed to commit an estimated \$48 million in pass-through funding to the ARP in 2018 and \$323 million in estimated total funding through 2022.<sup>12</sup> This federal assistance will fund more than 80% of the ARP, while the state retains responsibility for the remaining cost.<sup>13</sup> As a result of the waiver approval, Alaska will be able to offset a large portion of state costs for the ARP and provide sustainable funding for the program.

Other states have sought to replicate the success of Alaska's modified insurance market and are following suit with their own 1332 waiver applications. Minnesota and Oregon, for example, have submitted 1332 waiver applications, seeking to set aside the

community rating provisions of the ACA (§ 1312 (c) (1)). Both states seek to use federal funds to support their respective state-run reinsurance programs: the Minnesota Premium Security Plan<sup>14</sup> and the Oregon Reinsurance Program.<sup>15</sup> Minnesota has had to cope with the loss of its most popular Marketplace insurer and has experienced premium rate increases of approximately 67% for 2017, in spite of having four issuers offering plans.<sup>16,17</sup> Oregon, however, will maintain at least two issuers in most counties for the 2018 plan year, and due to its reinsurance program, has experienced only modest premium rate increases.<sup>18</sup> Minnesota's waiver was recently approved; Oregon's applications is pending.<sup>19</sup> California and Oklahoma had submitted 1332 waiver applications, but both states withdrew them.<sup>20</sup>

### Limits on Flexibility

It is not clear how much flexibility HHS is willing to grant a state using a 1332 waiver request for a reinsurance program. Iowa's pending application for a 1332 waiver may test those limits as it goes further than the applications previously discussed. After three out of four insurers exited Iowa's Marketplace for 2018, and rates were predicted to rise an average of 43.5%,<sup>21</sup> Iowa's insurance commissioner submitted a 1332 waiver request to HHS for a one-year waiver from a number of ACA rules in order to implement a reinsurance program and stopgap insurance plan. The stopgap plan, a single plan for the remaining Marketplace insurer to offer, would be equivalent to a silver level plan covering all ACA essential health benefits and Iowa state-mandated benefits. However, the subsidies for the plan would be significantly different from what is required under the ACA: Cost-sharing reduction (CSR) subsidies would be reduced, and premium subsidies would be flat monthly credits, paid directly to the insurer, based on age and 2017 income with no variations for insurance cost. Iowa proposes to use the money that the federal government would have spent on premium subsidies and CSRs to fund the premium subsidies for the stopgap plan and reinsurance programs. Iowa's proposal letter concedes that it is pushing the boundaries of what is allowable under a 1332 waiver, as HHS does not have the authority to allow states to design their own premium subsidy programs. Additionally, a number of basic 1332 waiver proposal requirements, such as prior public input, actuarial analyses, and specific supportive state legislation are notably absent from their proposal.<sup>22</sup>

### Other 1332 Waivers

Section 1332 waivers can be used for more than funding reinsurance programs. Hawaii has a 1332

waiver that was approved in 2016 and waives the ACA requirement that the state operate a Small Business Health Options Program (SHOP) exchange in order for the state to maintain its employer coverage requirements, which predated the ACA and require more generous benefits. The waiver qualifies Hawaii for an estimated \$259,000 in federal pass-through funding in 2017, with a total estimated pass-through funding for years 2017 to 2021 of \$2.8 million. Hawaii had also requested that state agencies, other than Medicaid, have a role in its individual insurance exchange; however, that request was denied.<sup>23</sup> Vermont has requested a similar waiver from the SHOP requirements in order to allow small businesses to enroll directly with insurers rather than through an online portal.<sup>24</sup> Vermont's application was filed in March 2016 and is still pending.<sup>25</sup> Finally, Massachusetts submitted a waiver request in September that would replace the ACA's CSR federal subsidy requirements with a state-based Premium Stabilization Fund that would make similar payments to insurers. Pass-through funding for 2018 is estimated at \$143 to \$146 million.<sup>26</sup> Details for all active state waiver requests and their status are listed in the table at the end of this brief.

### Options for Georgia

Georgia has also faced instability in its individual health insurance market. From 2016 to 2017,

Georgia's Marketplace enrollment decreased by approximately 16 percent.<sup>27</sup> Georgia will have four insurance providers offering Marketplace plans for 2018,<sup>28</sup> down from five insurers in 2017 and seven in 2016.<sup>29</sup> Moreover, the individual market's largest insurer, Blue Cross Blue Shield of Georgia, initially attempted to exit the entire Marketplace for 2018, eventually agreeing, after negotiations with the state insurance commissioner, to offer coverage in 85 counties that would have otherwise had no insurance offerings.<sup>30</sup> All insurers remaining in the Georgia Marketplace proposed large premium increases for 2018; average premium increases of 51% were recently approved by the Georgia insurance commissioner for the state's 2018 Marketplace.<sup>31</sup>

With decreased enrollment, uncertain CSR payments, and the ever-rising cost of health care, Georgia policymakers may consider looking to 1332 waivers, particularly those supporting reinsurance programs, as a potential way to stabilize the state's Marketplace. If policymakers consider 1332 waivers, it is important to keep in mind that any proposal must adhere to waiver requirements around comprehensive benefits, affordability, covering a comparable number of residents, and federal cost-neutrality. The Georgia Health Policy Center will continue to monitor proposed and approved 1332 waivers as potential models for Marketplace stability in Georgia.

**Table 1. Active 1332 Waiver Applications (as of Oct. 12, 2017)**

STATE	ACA PROVISIONS WAIVED	MAIN OBJECTIVES	SUBMITTED	STATUS AS OF 10/1/17
AK	Individual market rating requirements (community rating; single risk pool)	<ul style="list-style-type: none"> <li>Operate Marketplace reinsurance program</li> <li>Lower premiums</li> <li>Increase insurance coverage (keep insurers offering in market)</li> <li>Access federal pass-through funds to sustain program/offset state costs</li> </ul>	12/29/16	Approved 7/7/17
HI	Small Business Health Options Program (SHOP) exchange requirements	<ul style="list-style-type: none"> <li>Retain employer coverage provisions in state law, which requires more generous coverage than the ACA</li> </ul>	8/10/16	Approved 12/30/16
IA	Individual market rating requirements (community rating; single risk pool); Marketplace metal tiers of coverage; premium tax credits; cost-sharing reduction subsidies	<ul style="list-style-type: none"> <li>Create Marketplace stopgap plan</li> <li>Replace advanced premium tax credits with flat premium subsidies based on age and income</li> <li>Reduce cost-sharing subsidies</li> <li>Establish a reinsurance program</li> <li>Use federal pass-through funds to finance new premium subsidies and reinsurance program</li> </ul>	6/12/17	Pending; comment period ends 10/19/2017
MA	Federal CSR subsidy payments to insurance companies	<ul style="list-style-type: none"> <li>Create a state-based Premium Stabilization Fund to make similar payments to insurers</li> </ul>	9/8/2017	Pending
MN	Individual market rating requirements (community rating; single risk pool)	<ul style="list-style-type: none"> <li>Create Marketplace reinsurance program</li> <li>Funded with combination of federal pass-through funds and state appropriations</li> </ul>	5/5/17	Approved 9/22/2017
OR	Individual market rating requirements (community rating; single risk pool)	<ul style="list-style-type: none"> <li>Create Marketplace reinsurance program</li> <li>Funded with combination of federal pass-through funds and state appropriations</li> </ul>	8/31/17	Pending; comment period ends 10/11/17
VT	SHOP exchange website for enrollment and premium processing	<ul style="list-style-type: none"> <li>Maintain current configuration of state's small-group market</li> <li>Allow small employers to enroll directly with health insurance carriers rather than through an online SHOP web portal</li> </ul>	3/15/16	Incomplete, 6/9/2016; pending state update

Source: The Center for Consumer Information and Insurance Oversight. (2017). Section 1332: State Innovation Waivers. Retrieved October 3, 2017 from [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_State\\_Innovation\\_Waivers-.html](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html)

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- <sup>2</sup> High-risk pools are defined as alternative insurance coverage programs for individuals with costly or chronic pre-existing health conditions, which are subsidized by state or federal governments. Source: Georgia Health Policy Center. (2017). Little Blue Book: A health glossary. Retrieved from <http://ghpc.gsu.edu/download/little-blue-book/>
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