



ACA COMPLIANCE BULLETIN

HHS PROMOTES ACA SECTION 1332 WAIVERS

HIGHLIGHTS

- Beginning in 2017, states can apply for State Innovation Waivers from certain ACA provisions.
- These waivers allow states to implement their own strategies for providing access to quality, affordable health care.
- Federal funding is also available for states to implement a waiver.

IMPORTANT DATES

March 13, 2017

HHS sent a letter to state governors highlighting the availability of State Innovation Waivers.

January 1, 2017

State Innovation Waivers are available beginning in 2017.

OVERVIEW

On March 13, 2017, the Department of Health and Human Services (HHS) sent a [letter](#) to state governors to highlight Section 1332 of the Affordable Care Act (ACA). Beginning in 2017, Section 1332 allows states to apply for a **State Innovation Waiver** from certain ACA requirements.

These waivers are intended to allow states the flexibility to pursue innovative strategies for providing their residents with access to high quality, affordable health insurance, while retaining the basic protections of the ACA.

CURRENT STATUS

[Final regulations](#) on the ACA's Section 1332 State Innovation Waivers were published on Feb. 27, 2012. HHS is now promoting the availability of these waivers as a result of President Donald Trump's [executive order](#) directing federal agencies to provide relief from the burdens of the ACA.

HHS and the Treasury (the Departments) are responsible for reviewing waiver applications from states. Currently, three states have submitted applications for State Innovation Waivers: Alaska, Hawaii and Vermont.

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ACA Section 1332 allows a state to apply for a State Innovation Waiver to pursue innovative strategies for providing their residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA. According to the Departments, State Innovation Waivers allow states to implement innovative ways to provide access to quality health care that:

- ✓ Is at least as comprehensive and affordable as would be provided absent the waiver;
- ✓ Provides coverage to a comparable number of residents as would be provided coverage absent a waiver; and
- ✓ Does not increase the federal deficit.

ACA Section 1332 allows the Departments to waive the application of certain ACA provisions in states that receive a State Innovation Waiver.

State Innovation Waivers are available beginning Jan. 1, 2017. Federal funding is also available for states to implement a waiver. State Innovation Waivers are approved for five-year periods and can be renewed. Applications for the waivers should be submitted to stateinnovationwaivers@cms.hhs.gov.

ACA Provisions that May be Waived

Through an approved State Innovation Waiver, the Departments are authorized to waive the following ACA provisions under their respective jurisdictions:

- ✓ Establishment of qualified health plans (QHPs);
- ✓ Consumer choices and insurance competition through the Exchanges;
- ✓ Premium tax credits and cost-sharing reductions for plans offered within the Exchanges;
- ✓ The employer shared responsibility rules; and
- ✓ The individual mandate.

Section 1332 does not change existing waiver authority for provisions in other federal health programs, such as Medicaid or Medicare (including waiver authorities under Section 3021 specific to the Center on Medicare and Medicaid Innovation, or under Section 1115 related to Medicaid and CHIP), although states may apply for those waivers as part of the coordinated application process to be developed by HHS.

Public Input Process Prior to Submission of an Application

Prior to submitting a State Innovation Waiver application to HHS for review and consideration, a state must provide **public notice and a comment period** sufficient to ensure a meaningful level of public input on the application. During the public comment period, the state must conduct public hearings regarding the state's application. In addition, a state with one or more federally recognized tribes within its borders must conduct a separate process for meaningful consultation with the tribes as part of the notice and comment process.

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Application Requirements

The final regulations specify what information needs to be included in an application for a State Innovation Waiver. Critical elements of that application include (but are not limited to) the items listed below. HHS may also request, or a state may propose, additional information to aid in the review of the application.

- ✓ The list of provisions the state seeks to waive and the rationale for the specific requests.
- ✓ Data, assumptions, targets and other information (including actuarial analyses and certifications) showing that the proposed waiver will provide coverage that is as comprehensive, as affordable and provided to as many residents as without the waiver and that it will not increase the federal deficit.
- ✓ 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.
- ✓ A description and copy of the enacted state legislation providing the state authority to implement the proposed waiver.
- ✓ A detailed plan as to how the state will implement the waiver, including a timeline.

Application Review Process

Upon receipt of a State Innovation Waiver application, the Departments will work with the state on the review and approval process. This process includes a preliminary determination and, if the Departments determine that the application is complete, a public notice and comment period. The Departments' final decision will be issued no later than 180 days after the determination that an application is complete.

Section 1332 State Innovation Waiver Applications

Currently, the following three states have submitted applications for State Innovation Waivers:

- ✓ **Alaska:** The Departments requested comments on [Alaska's Section 1332 State Innovation Waiver](#) as part of the federal public comment period, which closed on Feb. 16, 2017. The Departments are reviewing the application and will work with the state on any updates or adjustments necessary for receipt of pass-through funding, consistent with the statute.
- ✓ **Hawaii:** Having completed a review of Hawaii's application, the Departments [approved Hawaii's Section 1332 State Innovation Waiver](#) on Dec. 30, 2016, subject to the state's acceptance of the Specific Terms and Conditions (STCs). This approval is effective for Jan. 1, 2017, through Dec. 31, 2021. The Departments have provided a [fact sheet](#) on Hawaii's State Innovation Waiver.
- ✓ **Vermont:** Although Vermont has submitted an [application for a Section 1332 State Innovation Waiver](#), the Departments have [determined that its application is incomplete](#). Vermont may submit a revised application for the Departments to review.

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In addition, California submitted a [Section 1332 State Innovation Waiver application](#) on Dec. 19, 2016, but later [withdrew its application](#) on Jan. 18, 2017. California may choose to submit an application for a Section 1332 State Innovation Waiver in the future.

More Information

HHS maintains a [webpage](#) that provides detailed information on Section 1332 State Innovation Waivers, including fact sheets and frequently asked questions.