Virginia: State Innovation Waiver

May 18, 2022

The U.S Department of Health & Human Services and the U.S. Department of the Treasury (collectively, the Departments) approved Virginia's application for a State Innovation Waiver (under Section 1332 of the Affordable Care Act (ACA) referred to as a "section 1332 waiver") for an initial period of up to five years, beginning in PY2023. Virginia's section 1332 waiver application, submitted pursuant to § [38.2-6606](38.2-6606) of the Code of Virginia, seeks to implement a reinsurance program called the Commonwealth Health Reinsurance program. Actuarial analysis performed by Virginia and submitted as part of its waiver application estimated that premiums would be 15.6% lower on average across the state in PY 2023 than they would have been absent the waiver.

The Departments have determined that Virginia's section 1332 waiver plan meets the requirements outlined in section 1332(b)(1) of the ACA. Specifically, the section 1332 waiver is projected:

- to provide coverage at least as comprehensive as coverage provided without the waiver;
- to provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided without the waiver;
- to provide coverage to at least a comparable number of people as would be provided without the waiver; and
- to not increase the federal deficit.

Virginia's State Innovation Waiver under section 1332 of the ACA is approved subject to Virginia accepting the waiver specific terms and conditions (STCs). This waiver approval is effective from January 1, 2023 through December 31, 2027.

Summary of Virginia's Application for a State Innovation Waiver under Section 1332 of the ACA

Virginia's application for a State Innovation Waiver under section 1332 of the ACA seeks to waive section 1312(c)(1) of the ACA—the requirement to consider all enrollees in a market to be part of a single risk pool, to the extent that it would otherwise require excluding total expected state reinsurance payments when establishing the market-wide index rate—in order to implement the state reinsurance program for PYs 2023 through 2027. The state's reinsurance program will operate as a traditional, claims-based attachment-point reinsurance program by reimbursing qualifying individual market health insurers for a percentage of an enrollee's claims costs exceeding a specified threshold (or "attachment point") and up to a specified ceiling (or "reinsurance cap"). Specifically, in PY 2023, the program will reimburse claims between an attachment point of $40,000 and an estimated $155,000 cap with a coinsurance rate of 70%.

As a result of the Departments' approval of Virginia's section 1332 waiver application, individual market consumers are expected to see lower premiums, which should attract new consumers while also keeping current consumers in the individual market. Virginia will receive federal pass-through funding to help offset a substantial portion of state costs for the state-based reinsurance program. Virginia projects that, under its section 1332 waiver, statewide premiums will be about 15.6% lower in PY 2023 than they would be without the waiver. In addition, Virginia projects that individual market enrollment will be about 2.9% higher in PY 2023 than it would be without the waiver, due to lower premiums resulting from stabilization of the individual market. These projections were certified by independent actuaries and reviewed by the Departments.

Because the Virginia reinsurance program is expected to lower premiums on the second-lowest cost silver plan, the plan used to establish the value of the PTC, the federal government will spend less on PTC under the waiver than it would absent the waiver. As such, Virginia will receive pass-through funding to support the reinsurance program based on the amount of PTC that would have been provided to Virginians absent the waiver but will not be provided under the waiver. This amount will be reduced, if necessary, to ensure deficit neutrality. Virginia must inform the Departments as to whether the state budget has met certain milestones to demonstrate the state has secured the necessary state funding before pass-through amounts will be made available to the state.

Section 1332: State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing residents with access to high-quality, affordable health insurance. These waivers provide states with the opportunity to develop strategies that best suit their individual needs. Through innovative thinking tailored to specific state circumstances, states can lower premiums for consumers, improve market stability, and increase consumer choice.

In order for a section 1332 waiver to be approved, the Departments must determine that the waiver meets statutory guardrails to provide coverage that is at least as comprehensive as the coverage provided without the waiver; provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as without the waiver; provide coverage to at least a comparable number of residents as without the waiver; and not increase the federal deficit.

State Innovation Waivers have been available since January 1, 2017; are approved for up to five-year periods; and can be extended. The Departments welcome the opportunity to work with states on section 1332 waivers. States interested in applying for a section 1332 waiver can find application tools and resources, including an application checklist and application templates, on the CMS website here.

The section 1332 waiver approval letter and STCs for Virginia can be found here:
https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-