



# Steps for States Considering a 1332 Waiver

*May 2019*

# 1332 Pre-Application Process Overview



Note: These steps are illustrative as some steps are happening simultaneously or in different order depending on the state.

# Step 1: Identifying the Policy Problem and Solutions

- States examine successes, issues, or potential problems in the health insurance market related to:
  - Issuer participation?
  - Plan choices?
  - Affordability?
  - Risk pool demographics?
- Solutions:
  - Are there policy solutions through a 1332 waiver? Or a state level approach?

*\*Remember it's not too early to talk to the Departments at this point! States are encouraged to reach out to the Departments by emailing [StateInnovationWaivers@cms.hhs.gov](mailto:StateInnovationWaivers@cms.hhs.gov) for assistance in formulating an approach that meets the requirements of Section 1332.*

# Step 2: Strategy and Coalition Building

- Developing a waiver idea and coalition building?
  - Who are the stakeholders impacted to discuss with (i.e. advocates, issuers, legislators, providers, hospitals)?
  - Working group approach vs. specific proposal?
  - Timing Considerations: What is the timeline for the waiver or policy change to be effective? Does this impact rate setting and plan submission timelines? Are there operational considerations?

# Step 3: Data Gathering and Actuarial Analysis

- Who will do the analysis?
  - Is a contract needed?
- Collecting Data
  - Is data needed from issuers?
    - Potential request for data from issuers (for example: claims, enrollment, PTC)
  - What data is publicly available that could be useful?
    - CMS Public Use Files: [https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018\\_Open\\_Enrollment.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018_Open_Enrollment.html)
    - SBTC information on IRS website: <https://www.irs.gov/default-channel-no-value/soi-tax-stats-affordable-care-act-aca-statistics-credit-for-small-employer-health-insurance-premiums>
    - PTC, Coverage, and other information on IRS website: <https://www.irs.gov/statistics/soi-tax-stats-affordable-care-act-aca-statistics>

# Step 3: Data Gathering and Actuarial Analysis

- Complete Actuarial and Economic Analysis
- Resource: Pass-Through Funding Tools and Resources  
Section of 1332 website
  - [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)

# Step 4: State Legislative Authority

- *Note: States can simultaneously pursue legislative authority to pursue a waiver while developing and drafting a waiver application and actuarial analysis.*
- Questions to Consider:
  - What authority does a state have in law to implement the PPACA?
  - What additional authority is needed to implement the specific state plan (if any)?
  - What authority can be used through an Executive Order or Regulation?
  - Is state funding necessary to implement the state waiver plan?
- Legislative Approaches:
  - General authority to implement a waiver vs. authority for a specific waiver plan?
  - Pursing one piece of legislation or multiple vehicles to implement a state plan?
  - Including specifics of a program, a range, or are specifics determined at a later date?
  - Flexibility to adjust the waiver plan?
  - Entity to implement the waiver plan?
  - Timeline for authority and/or funding?

# Step 5: Preparing the State Application

- Public notice and comment period
- Enacted state legislation
- List of provisions of the PPACA to be waived
- Information sufficient to determine compliance with guardrails, with actuarial support and economic analysis
- 10-year budget plan
- Implementation plan
- Reporting targets
- Principles discussion



# Step 6: State Public Comment Process

- Post draft application for state public comment period (30 days minimum and 2 public hearings minimum + tribal consultation if the state has Federally-recognized tribes)
- During this time the state is recommended to be in contact with the Departments about the waiver and timeline for submission.

# 1332 Application Process Overview



# Step 7: Application Submission

- **Completeness Review:**
  - HHS/Treasury will conduct a preliminary review of the application for completeness within 45 days of receipt of the application.
- **Federal Comment Period:**
  - Complete applications will have a 30 day federal comment period.
- **Application Review:**
  - The final decision of HHS/Treasury will be issued no later than 180 days after the application completeness determination is made.