

# Section 1332 Waivers: Potential Impact on Cancer Patients & Survivors



Section 1332 of the Affordable Care Act (ACA) allows states to apply for waivers to experiment with different ways of providing and paying for health care. These waivers are often referred to as “Section 1332 waivers,” or “state innovation waivers.” Two states – Hawaii and Alaska – have been granted waivers and six other states have submitted waiver requests. It is important for the cancer community to fully understand how Section 1332 waivers could impact cancer patients and survivors.

## *What is a Section 1332 waiver?*

Beginning in 2017, states have the option of applying for a waiver under Section 1332 of the ACA to make changes to the insurance markets in that state and the rules that govern those markets. The purpose of these waivers is to remove federally-imposed requirements and allow states flexibility to make changes while still accomplishing the goals of the original policy.

Under Section 1332, states may propose to waive one or more of the following provisions of the ACA:

- The individual mandate (requiring individuals to obtain health insurance coverage);
- The large employer mandate (requiring firms with more than 50 employees to provide insurance)
- Standards for qualified health plans, including the 10 essential health benefits, limits on annual cost-sharing, metal tier categorizations of actuarial value, and other rules;
- Standards for health insurance exchanges, including the establishment of a website, provision of navigators and call center assistance, and certification that plans meet requirements for network adequacy; and
- Cost-sharing reduction subsidies (CSRs) and advance premium tax credits (APTCs) – the law allows states to request the money its residents would have otherwise received from these subsidies as an aggregate amount to be used to implement the waiver.

To date, six states have submitted applications to HHS for Section 1332 waivers. So far, states have applied for waiver authority to maintain rules or protections in place before the ACA such as more generous employer coverage provisions, establish re-insurance programs intended to help lower premiums, and implement stopgap measures to address low plan participation in a state exchange.<sup>1</sup> Currently, two waivers have been approved: Hawaii has an approved waiver to retain its employer coverage provisions, and Alaska has an approved waiver to establish a re-insurance program.<sup>2</sup>

## *What standards are states required to meet to get a Section 1332 waiver?*

Current law specifies that a state’s waiver application will only be approved if the changes requested will:

- Provide coverage that is at least as comprehensive in covered benefits;
- Provide coverage that is at least as affordable (accounting for premiums and excessive cost-sharing);
- Provide coverage to at least a comparable number of state residents; and
- Not increase the federal deficit.

These four conditions are often called the “guardrails” of Section 1332 waivers, and were designed to prevent states from simply waiving requirements without replacing with other policies that are as protective to patients.

In 2012, the U.S. Department of Health and Human Services (HHS) issued regulations outlining the

procedure for states applying for waivers.<sup>3</sup> One of the requirements is that states develop waiver applications using open and transparent processes allowing comments from the public. In 2015, HHS and the Treasury Department issued guidance on how the departments would apply the four “guardrails” to waiver applications.<sup>4</sup> The guidance set strict standards, but it is unclear to what extent the current Administration will enforce the 2015 guidance, or issue new guidance or regulation. Additionally, the Administration has released a checklist for states wishing to apply for a waiver establishing reinsurance or high risk pool programs.<sup>5</sup>

### *How do Section 1332 waivers affect cancer patients & survivors?*

Current law provides crucial protection to cancer patients and survivors. Many of the protections most important to the cancer community – including the essential health benefits requirements, maximum out-of-pocket limits, and network adequacy standards – are eligible for state waivers under Section 1332. Additionally, provisions that are integral to helping low-income cancer patients and survivors afford health insurance – including the advance premium tax credits and the cost-sharing reduction subsidies – are also eligible for waivers. If designed and implemented well Section 1332 waivers could help to improve the stability of a state’s insurance market. However, if not carefully crafted these waivers could undercut the protections provided by the ACA that are most important for cancer patients and survivors. That is why it is so critical that states applying for waivers follow an open and transparent process – ensuring that the views of patients are carefully considered as waiver proposals are crafted.

Any proposals that change the Section 1332 waiver process are even more concerning. The Better Care Reconciliation Act (BCRA) proposed to remove 3 of the 4 “guardrails” for these waivers, and required HHS to approve any state waiver application as long as it purports to not increase the federal deficit. This would have allowed states to waive crucial protections important to cancer patients and survivors without replacing them with other rules or protections, and would have resulted in drastically increased costs and reduced coverage quality for the cancer community.

### **ACS CAN Position**

ACS CAN believes that all 1332 waivers must maintain the insurance market protections that are most critical to cancer patients and survivors. Further, the process for crafting state waivers should be open and transparent with opportunity for all stakeholders – including patient advocates – to provide input.

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<sup>1</sup> Kaiser Family Foundation. Section 1332 State Innovation Waivers: Current Status and Potential Changes. July 2017.

<http://files.kff.org/attachment/Issue-Brief-Section-1332-State-Innovation-Waivers-Current-Status-and-Potential-Changes>.

<sup>2</sup> U.S. Department of Health and Human Services. Section 1332: State Innovation Waivers.

[https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section\\_1332\\_state\\_innovation\\_waivers.html](https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers.html).

<sup>3</sup> U.S. Department of Health and Human Services & U.S. Department of Treasury. Application, Review and Reporting Process for Waivers for State Innovation. Final Rule. <https://www.gpo.gov/fdsys/pkg/FR-2012-02-27/pdf/2012-4395.pdf>.

<sup>4</sup> U.S. Department of Health and Human Services & U.S. Department of Treasury. Waivers for State Innovation. Guidance. <https://www.gpo.gov/fdsys/pkg/FR-2015-12-16/pdf/2015-31563.pdf>.

<sup>5</sup> U.S. Department of Health and Human Services. Checklist for Section 1332 State Innovation Waiver Applications, including specific items applicable to High-Risk Pool/State-Operated Reinsurance Program Applications.

<https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-cpdf.pdf>.