

## **101 ON 1332 WAIVERS**

With Congressional efforts to repeal and/or replace the ACA on hold, states have the opportunity to use the ability granted by 1332 waiver authority to stabilize insurance markets, address other state issues, or request alternate ways to provide coverage to the residents of their state.

**What is a 1332 Waiver?** Section 1332 of the ACA 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 protection of the ACA. State waivers are approved for a five year period and can be renewed. Waiver authority began January 1, 2017.

**What are the requirements of the 1332 Waiver?** The ACA contains guardrails that determine how 1332 waivers can be used in states. The waiver application must demonstrate that the innovation plan will provide coverage that: is at least as comprehensive in covered benefits; is at least as affordable; covers at least as many residents in the state; and does not increase the federal deficit.

**What does a 1332 Waiver allow?** States may seek waivers of the following requirements:

- Individual and employer mandates
- Essential health benefits (EHBs)
- Limits on cost sharing for covered benefits
- Metal tiers of coverage
- Premium tax credits and cost-sharing reductions – states are able to request an aggregate payment of what residents would otherwise have received in premium tax credits and cost-sharing reductions
- Standards for health insurance marketplaces, including requirements to establish a website, a call center and a navigator program

**What doesn't a 1332 Waiver allow?** States cannot waive certain provisions through 1332, including guarantee issues, age rating, and prohibitions on health status and gender rating.

**What needs to happen to submit a 1332 Waiver?** First and foremost, enabling state legislation is needed to file a waiver. SB961 was introduced on April 24<sup>th</sup> to do just that. An application must also include the following critical pieces:

- List of provisions the state seeks to waive, including rationale
- Data, assumptions, targets and other data sufficient to determine that the waiver will satisfy the waiver requirements stated above
- Actuarial analyses and actuarial certifications to support the state estimates that the waiver will comply with the waiver requirements
- 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

**Additional flexibility of 1332 waiver process under the Trump Administration** – The Trump Administration has the ability to interpret 1332 waiver authority different than those under the Obama Administration. Several letters have been issued by CMS that offer assistance in developing waivers and encourage states to submit waivers which signals the desire for states to control their own insurance market.

## SENATE BILL 691

Introduced on April 24, 2017 by Senators Shirkey (R), MacGregor (R), Marleau (R), Hildenbrand (R), Knezek (D), Hopgood (D), Anancich (D), Young (D), Hertel (D), Conyers (D), Zorn (R), and Schmidt (R). This bill has been referred to the Committee on Insurance.

SB961 seeks to create a Waiver Task Force to develop recommendations to obtain a State Innovation Waiver. The Governor will appoint members of the committee that include the following:

- A member from the Michigan Hospital Association (MHA)
- A member from the Small Business Association of Michigan (SBAM)
- A member from the Michigan Chamber of Commerce
- A member from the Michigan Association of Health Underwriters (MAHU)
- A member from the Michigan Association of Health Plans (MAHP)
- A member from the Department of Insurance
- A member representing members of the state, nominated by the DIFS Director
- A member from each qualified insurer (that person must be a full-time employee of the insurer)
  - NOTE: “Qualified Health Insurer” means a health insurer that is either a HMO or a nonprofit mutual disability insurer that has participated in the exchange in Michigan for each plan year the exchange has been operational and has been certified by CMS to participate in the exchange in 2018.

The Director or his designee shall serve as the Presiding Officer of the Task Force. The Task Force shall meet at the call of the Presiding Officer, not later than Sept. 1, 2018. The Task Force shall make at least one recommendation to the Director no later than March 31, 2019. The recommendations must include all of the following:

- A comprehensive description of the plan to obtain a state innovation waiver, including a timeline for implementation.
- The specific provisions of the ACA that Michigan seeks to waive
- Supporting information as required by federal requirements
- Additional information necessary to comply with applicable federal requirements
- Suggested legislative language to implement the state innovation waivers, if necessary in accordance with federal guidance
- Written evidence of the State Innovation Task Force’s compliance with applicable public notice requirements for the waiver

As soon as practical after the recommendations, the Director shall file with the appropriate federal agencies a State Innovation Waiver that will be implemented subject to Federal approval.

## HISTORY OF MICHIGAN’S MARKETPLACE

	2014	2015	2016	2017	2018
<b># of Carriers</b>	13	17	23	14	10
<b># on Marketplace</b>	13	16	16	10	8
<b>Avg. % Increase</b>	n/a	1.20%	6.50%	16.70%	26.80%
<b># Enrolled</b>		245,689	560,357	393,322	294,569

