

Checklists for Section 1332 State Innovation Waiver Applications

(Updated December 2024)

Introduction:

Section 1332 of the Patient Protection and Affordable Care Act (ACA) permits a State to apply for a State Innovation Waiver (also referred to as a section 1332 waiver) to pursue innovative strategies for providing the State’s residents with access to high quality, affordable health coverage.¹ The Centers for Medicare & Medicaid Services (CMS), within the Department of Health and Human Services (HHS), and the Department of the Treasury (collectively, the Departments) review section 1332 waiver applications.² The HHS regulations governing section 1332 waivers are at 45 C.F.R. Part 155 Subpart N.³ On September 27, 2021, a final rule⁴ appeared in the *Federal Register* (referred to as the “2022 final rule”) and provided updated information about the requirements and criteria that must be met for the approval of section 1332 waivers.

The Departments are interested in working with States on section 1332 waivers that would improve health equity, lower premiums for consumers, improve market stability, and increase consumer choice. In order for a State’s section 1332 waiver to be approved by the Departments, the State must demonstrate that the waiver will provide quality health coverage that is at least as comprehensive and affordable as would be provided without a waiver, will provide coverage to at least a comparable number of residents of the State as would be provided coverage without a waiver, and will not increase the Federal deficit.⁵ Under an approved section 1332 waiver, a State may receive pass-through funding associated with the resulting reductions in Federal spending on Federal financial assistance consistent with the statute.⁶

Checklists: The following checklists are intended to help States pursuing section 1332 waivers develop the required elements of an initial section 1332 waiver application or of an extension application or amendment application.⁷ The Departments may ask the State to submit additional supporting information.⁸ These checklists are intended to provide a brief overview and do not replace information found in the relevant statutes, regulations,⁹ and guidance. More information is available on the CMS section 1332 waiver webpage.¹⁰ The Departments encourage States interested in applying for section 1332 waivers to reach out to the Departments promptly for assistance in formulating an approach at StateInnovationWaivers@cms.hhs.gov.

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¹ Provisions that may be waived include the following: Part I of Subtitle D of Title I of the ACA (relating to establishing qualified health plans (QHPs)); Part II of Subtitle D of Title I of the ACA (relating to consumer choices and insurance competition through health insurance exchanges); Sections 36B of the Internal Revenue Code and 1402 of the ACA (relating to premium tax credits and cost-sharing reductions for plans offered within the health insurance exchanges); Section 4980H of the Internal Revenue Code (relating to employer shared responsibility); and Section 5000A of the Internal Revenue Code (relating to individual shared responsibility). See sections 1332(a)(2)(A)–(D) of the ACA.

² See section 1332(a)(6) of the ACA.

³ Parallel Department of the Treasury regulations are codified at 31 C.F.R. Part 33. For purposes of these checklists, citations are provided only to the HHS regulations at 45 C.F.R. Part 155 Subpart N.

⁴ Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond; Final Rule, 86 FR 53412 (Sept. 27, 2021), available at <https://www.federalregister.gov/documents/2021/09/27/2021-20509/patient-protection-and-affordable-care-act-updating-payment-parameters-section-1332-waiver>.

Initial Section 1332 Waiver Applications

45 C.F.R. § 155.1308 outlines the requirements and application procedures for an initial section 1332 waiver application.¹¹

	HHS Regulatory Citation and Description	Comments
1	<p>Application Procedures</p> <p>45 C.F.R. § 155.1308(a),(b),(c), (d)</p> <p>Acceptable formats for applications, application timing, preliminary review, notification of preliminary determination</p>	<p>E-mail applications to StateInnovationWaivers@cms.hhs.gov.</p> <p>Initial section 1332 waiver applications must be submitted far enough in advance to allow time for solicitation of public comment, the Departments' review of the application and implementation of the section 1332 State waiver plan as outlined in the application. For example, for section 1332 waivers that impact the individual market, submission before or during the first quarter of the year prior to the year the waiver would take effect would generally permit (but does not guarantee) sufficient time for review of the application before the State's implementation process, <u>including the rate review process</u>, would need to begin for the first plan year of the waiver. However, the length of time necessary for the Departments to review a waiver application depends on the nature and complexity of the waiver.</p> <p>The Departments will conduct a preliminary review of the application for completeness within 45 calendar days of application submission per 45 C.F.R. § 155.1308(c)(1).¹² If the Departments determine that an application is:</p> <ul style="list-style-type: none"> • incomplete, the State will be notified of the missing elements and may choose to submit a revised waiver application.

⁵ See sections 1332(b)(1)(A)–(D) of the ACA.

⁶ See section 1332(a)(3) of the ACA. Federal financial assistance eligible for pass-through funding are premium tax credits, cost-sharing reductions, and small business tax credits under section 36B of Internal Revenue Code or Part I of subtitle E of the ACA.

⁷ The specific requirements for an extension application or amendment application may differ from those enumerated here and are generally communicated to a state in response to its letter of intent to apply for an extension or amendment.

⁸ See 45 C.F.R. § 155.1308(g).

⁹ See 45 C.F.R. Part 155, Subpart N. Also see 77 FR 11700, available at <https://www.federalregister.gov/documents/2012/02/27/2012-4395/application-review-and-reporting-process-for-waivers-for-state-innovation> and 86 FR 53412, available at <https://www.federalregister.gov/documents/2021/09/27/2021-20509/patient-protection-and-affordable-care-act-updating-payment-parameters-section-1332-waiver>.

¹⁰ Available at https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html.

¹¹ Also see the 2022 final rule, 86 FR at 53457-88.

¹² See the definition of “complete application” at 45 C.F.R. § 155.1304.

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		<ul style="list-style-type: none"> complete, the State will be notified of the Departments’ preliminary determination of completeness and the 180-day Federal review period will begin.^{13 14 15} <p><i>Note:</i> Additional time may be needed if a State’s section 1332 waiver proposal includes changes or accommodations to the Federal information technology platform or HealthCare.gov operations. States seeking such changes as part of a section 1332 waiver are encouraged to engage with the Departments early in the process to determine whether Federal infrastructure can accommodate the requested flexibilities and the associated costs of any such changes.</p>
2	<p>State Public Input Requirements</p> <p>45 C.F.R. § 155.1308(f)(2)</p> <p>Written evidence of the State’s compliance with the public notice and comment requirements set forth in 45 C.F.R. § 155.1312(b).</p>	<p>The public notice and comment period must be sufficient to ensure a meaningful level of public input per 45 C.F.R. § 155.1312(a)(1). In general, the comment period should be a minimum of 30 calendar days, but a longer period may be appropriate for complex proposed waiver plans.</p> <p>Include in the waiver application:</p> <ol style="list-style-type: none"> 1. A copy of the public notice that was posted either on the State’s website or through other effective means of communication. Per 45 C.F.R. § 155.1312(b)(1)-(4), the notice must include a comprehensive description of the section 1332 waiver application, where copies of the application are available for public review and comment, how and where to submit and review written comments, and the timeframe to submit comments. The public notice must also include the location, date, and time of public hearings. 2. A description of the key issues raised during the State public comment period.
	<p>Written evidence of the State’s compliance with the public hearing requirements set forth in 45 C.F.R. § 155.1308(f)(2) and 45 C.F.R. § 155.1312(c).</p>	<p>Include in the waiver application:</p> <ol style="list-style-type: none"> 1. Evidence that a minimum of two public hearings were conducted regarding the State’s application (e.g., notice or agenda). These hearings should be convened on separate dates and locations and can be conducted in a virtual, hybrid, or in-person format. 2. A description of the key issues raised during public hearings. 3. Any request to modify public notice requirements due to an emergent situation (per 45 C.F.R. § 155.1318).

¹³ The Departments will issue a final decision no later than 180 calendar days after the determination that a complete application was received. See 45 C.F.R. § 155.1316(c).

¹⁴ A preliminary determination that an application is complete does not preclude a finding during the 180-day Federal decision-making period that a necessary element of the application is missing or insufficient. See 45 C.F.R. § 155.1308(c)(3).

¹⁵ Federal public comment periods are held concurrently with the Departments’ review. States or the Departments may request a pause in the review process if additional information or analysis is necessary in response to questions raised by the Departments or through the public comment period.

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	If applicable and subject to the Departments' approval, the public notice requirements set forth in 45 C.F.R. § 155.1312 may be modified during an emergent situation, as set forth in 45 C.F.R. § 155.1318.	<p>To request a modification, the State must act in good faith, and in a diligent, timely, and prudent manner. The modification request must:</p> <ol style="list-style-type: none"> 1. Be in the form and manner specified by the Departments' Secretaries. 2. Include justification for the request and the proposed alternative public notice procedures, including public hearings designed to provide the greatest opportunity for meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification. 3. Include justification for any alternative public notice procedures the State requests at the Federal level. 4. Include an explanation of how the emergent circumstances underlying the request resulted from a natural disaster, public health emergency, or other emergent situation that threatens access to comprehensive coverage, access to health care, or human life and could not reasonably have been foreseen, and how a delay would undermine or compromise the purpose of the waiver and be contrary to the interests of consumers. <p>The State must publish any modification requests and determinations on its website within 15 calendar days of receipt of the determination.</p>
	If applicable, written evidence of the State's compliance with the meaningful Tribal consultation requirements set forth in 45 C.F.R. § 155.1308(f)(2) and in 45 C.F.R. § 155.1312(a)(2).	<p>Include in the waiver application (if applicable):</p> <ol style="list-style-type: none"> 1. Evidence of consultation between the State and Tribal representatives (e.g., official meetings, "dear Tribal leaders" letters, forums). 2. A description of the key issues raised during consultation.
3	<p>State Law Requirements</p> <p>45 C.F.R. § 155.1308(f)(3)(i), (ii)</p> <p>Comprehensive description of State's enacted legislation and program to</p>	<p>Include in the waiver application a copy of the applicable enacted State legislation, regulation, or executive order that establishes the State's authority to pursue a section 1332 waiver and/or to implement the State's waiver plan. Although States must generally enact legislation establishing authority to pursue and implement a section 1332 waiver, in certain circumstances, States may use existing legislation that provides statutory authority to enforce ACA provisions or implement the State plan if it is combined with a State regulation or executive order that authorizes the actions to be taken under a waiver.</p>

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	implement a plan meeting the requirements for a section 1332 waiver and a copy of the State's enacted legislation.	<p><i>Note:</i> Legislation may need to be specific to a State's plan. States are encouraged to engage with the Departments early in the section 1332 waiver application process to review draft legislation and help assess whether additional or more specific authority is needed.</p> <p>For States seeking to implement a State-operated high-risk pool/State reinsurance program and to receive pass-through funding:</p> <p>1) If the State has authority to apply for a waiver and discretion to implement the State-operated high-risk pool/State reinsurance program (i.e., "may" be implemented), the State should include in the State's application that the State-operated high-risk pool/State reinsurance program cannot operate without an approved section 1332 waiver in place as described below in section 4 of this checklist.</p> <p>2) If the State has authority to apply for a waiver, but a requirement that a State-operated high-risk pool/State reinsurance program "must" or "shall" be implemented, then the State must make the State-operated high-risk pool/State reinsurance program contingent upon Federal approval of the waiver (or will become effective only if the section 1332 waiver is approved). This contingency is required for pass-through funding to be calculated since the program is mandated in the State's legislation. This contingency can be accomplished by making appropriations or funding for the program or the authorization for the program contingent on approval of the section 1332 waiver, or by otherwise structuring the legislation, regulation, or executive order so that the program cannot operate without an approved section 1332 waiver in place.</p>
4	<p>Waiver Request Requirements</p> <p>45 C.F.R. § 155.1308(f)(3)(iii)</p> <p>List of provision(s) of the law that the State seeks to waive and reason for the specific request(s).</p>	<p>The State must include a list of the provision(s) of the law and the specific requirements the State seeks to waive.¹⁶ The State should also discuss how the waived provisions are necessary for or will facilitate the State's proposed waiver plan. States should request a waiver of each applicable provision to the extent necessary to implement the program.</p> <p>Please see below for provisions a State would likely need to waive for certain types of waivers. The specific provisions waived will depend on the goals and structure of the proposed waiver program.¹⁷</p>

¹⁶ See also the 2022 final rule, 86 FR at 53483.

¹⁷ States are encouraged to reach out to CMS if they are uncertain which provisions of the ACA the waiver application should seek to waive.

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		<p>For a State-operated high-risk pool/State reinsurance program¹⁸ for the individual market, the State should request to waive section 1312(c)(1) of the ACA.¹⁹</p> <p><i>For a State coverage innovation program²⁰ that would reduce premiums via premium reduction targets</i>, the State should, as applicable, request waiver of sections 1312(c)(1) and/or 1312(c)(2) of the ACA in order to modify the market-wide index rate. The specific provisions waived will depend on the goals and structure of the proposed waiver program.</p> <p><i>For a State coverage innovation program²¹ that would create new coverage options for individuals currently eligible to enroll in on-Exchange coverage</i>, the State should, as applicable, request waiver of section 1402 of the ACA and section 36B of the Internal Revenue Code to adjust eligibility for cost sharing reductions and premium tax credits (PTCs). The State also should consider requesting a waiver of section 1312(c)(1) of the ACA as needed to address premium impacts of the waiver. As noted above, the specific provisions waived will depend on the goals and structure of the proposed waiver program.</p> <p><i>For a State coverage innovation program that would modify the individual or small group market or merge the small group and individual markets</i>, the State should request to waive sections 1312(c)(1), (2), and/or (3) of the ACA.²²</p>

¹⁸ A “State-operated high-risk pool/State reinsurance program” refers to any section 1332 waiver program designed to stabilize the State Exchange by establishing a high-risk pool or State reinsurance program. Seventeen States currently operate State-based reinsurance programs by waiving the single risk pool requirement under section 1312(c)(1) of the ACA to the extent that it would otherwise require excluding total expected State reinsurance payments when establishing the market-wide index rate.

¹⁹ For example, a State could waive section 1312(c)(1) of the ACA related to the individual market single risk pool in connection with implementation of a State-operated reinsurance program. Section 1312(c)(1) of the ACA requires a health insurance issuer to consider “all enrollees in all health plans offered by such issuer in the individual market to be members of a single risk pool.” As implemented, issuers are permitted to make certain identified adjustments to the market-wide index rate and State reinsurance payments are not identified as such. See 45 C.F.R. § 156.80(d)(1)(ii). In its waiver application, the State would explain how waiving the single risk pool provision would facilitate the operations of and/or requirements for participation in the State’s reinsurance program or high-risk pool and/or mechanism for a high-risk pool in its individual market. For example, a State aiming to maximize the rate-reduction impact of the proposal might explain that the State is requesting to waive the ACA single risk pool provision as implemented at 45 C.F.R. § 156.80 to the extent it would otherwise require excluding total expected State reinsurance payments when establishing the market-wide index rate.

²⁰ A “coverage innovation program” is any section 1332 waiver program that proposes to waive or waives provisions of the ACA to increase coverage, affordability, and/or comprehensiveness and that is not a State-based reinsurance program. For example, Colorado established premium-reduction targets for standardized plans. For other examples of coverage innovation programs, see approved waivers for New York and Washington.

²¹ For example, New York’s approved section 1332 waiver created a Basic Health Program (BHP) lookalike.

²² For example, Maine’s approved waiver amendment allowed the State to extend its State reinsurance program to a merged small group and individual market (also known as a pooled market), as well as quarterly adjustments for small group plans that

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		<i>For programs that would modify Exchange eligibility, the State should request to waive section 1312(f)(3) of the ACA.²³</i>
5	<p>Pass-through Funding Requirements</p> <p>45 C.F.R. § 155.1322</p> <p>Explain how, due to the structure of the section 1332 waiver plan and the statutory provisions waived, individuals (or employers) would no longer qualify for Federal financial assistance or would qualify for reduced Federal financial assistance.</p>	<p>If the State is seeking pass-through funding, the waiver application should explain how the waiver plan would result in individuals or employers qualifying for less Federal financial assistance under the proposed waiver than without the waiver. The application also should explain how the State plans to use pass-through funding to implement the proposed waiver plan.</p> <p><i>For any proposal that is projected to reduce premiums, the State should explain in its application how the waiver would reduce premiums and how such reductions would be measured.</i></p>
6	<p>Actuarial and Economic Analysis Requirements</p> <p>45 C.F.R. § 155.1308(f)(4)(i)-(iii)</p> <p>Actuarial analyses and actuarial certifications</p> <p>Economic analyses</p>	<p>For all waivers, a State must include in the waiver application:</p> <ol style="list-style-type: none"> 1. An actuarial analysis and certification from a member of the American Academy of Actuaries that supports the State's finding that the proposed waiver complies with the coverage, comprehensiveness, and affordability guardrail in each year of the waiver. The actuarial analysis should compare coverage rates, comprehensiveness of coverage, affordability of coverage, and net Federal spending and revenues under the waiver to those measures without the waiver for each year of the waiver. 2. An economic analysis, including a 10-year budget plan comparing coverage, comprehensiveness, affordability, and net Federal spending and revenues under the waiver to those measures absent the waiver for each year of the waiver and the 10-year budget plan.

do not renew on a calendar year basis. New York also waived section 1312(c)(1) to allow issuers to set rates with the Insurer Reimbursement Implementation Plan as if the individual market risk pool continued to include the population with estimated household incomes of 200-250 percent of the Federal Poverty Level to avoid premium increases.

²³ For example, Washington's approved section 1332 waiver expanded access to Exchange coverage to Washington residents regardless of immigration status.

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	Data and assumptions	<p>The analysis must support the State’s finding that the waiver will not increase the Federal deficit over the period of the waiver (up to 5 years) and will not increase the Federal deficit over the 10-year budget period.</p> <ol style="list-style-type: none"> 3. In line with E.O. 13985, a description of the impact of the proposed section 1332 waiver on health equity.²⁴ 4. The data and assumptions that the State relied upon to determine the effect of the waiver on coverage, comprehensiveness, affordability, and deficit neutrality requirements. <p>The Departments’ assessment will consider the effects of the proposed waiver program across different groups of State residents, with particular attention to effects on underserved residents. A waiver is unlikely to be approved if it reduces comprehensiveness, affordability, or coverage for underserved groups,²⁵ even if the waiver would maintain affordability in the aggregate. For example, a waiver proposal that would increase the number of State residents with large health care spending burdens would fail to meet the affordability guardrail, even if the waiver would increase affordability for other groups of State residents.</p> <p><i>Note:</i> States may combine the actuarial analysis and economic analysis into one report or submit separate reports.</p> <p><i>Note:</i> The Departments may ask States proposing to simultaneously implement two or more distinct program elements under a waiver to break out certain aspects of their statutory guardrail analyses by each program element in order to evaluate the isolated impact of each program element on the guardrails. Similarly, while States are required to model the impact of the waiver under current State and Federal law, additional scenarios²⁶ may be considered, if applicable.</p> <p>The remainder of section 6 of this waiver application checklist details the required elements of these analyses.</p>
	45 C.F.R. § 155.1308(f)(3)(iv)(A)	<p>A section 1332 waiver complies with the comprehensiveness guardrail if coverage under the waiver is forecast to be at least as comprehensive for residents of the State in the aggregate as coverage absent the waiver. Comprehensiveness refers to the scope of benefits provided by health</p>

²⁴ See the 2022 final rule, 86 FR at 53468.

²⁵ People who are underserved and/or experience health disparities include low-income individuals, older adults, people with disabilities, people with serious health issues or who have a greater risk of developing serious health issues, LGBTQ+ people, and people of color and others who have been underserved, marginalized, and adversely affected by persistent poverty and inequality. See the 2022 final rule, 86 FR at 53468.

²⁶ For example, if a State wishes to model both current law and the scenario in which a policy change is in effect, the Departments may consider that additional set of projections, but those scenarios do not replace the requirement to model current law.

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	Comprehensive Coverage Requirement	<p>coverage and is measured by the extent to which coverage meets the essential health benefits (EHB) requirements as defined in section 1302(b) of the ACA, aligns with the scope of benefits of health plans offered through the State's Exchanges or, as appropriate, Medicaid, or Children's Health Insurance Program (CHIP) standards. Generally, this guardrail should be forecast to be met in each year the waiver would be in effect.²⁷</p> <p>Include in the waiver application:</p> <ol style="list-style-type: none"> 1. Analysis and supporting data establishing that the waiver satisfies this guardrail. Include an explanation of how, if at all, coverage available under the waiver would differ from coverage absent the waiver and how the State determined coverage will be as comprehensive as existing coverage options. 2. Projected changes under the State's waiver plan in the number of individuals who would have coverage that satisfies EHB requirements, coverage of any particular category of EHB, or coverage that includes the services covered under the State's Medicaid program or CHIP. <p>The Departments' assessment will focus on the types of coverage residents are projected to actually purchase rather than the types of coverage to which residents have access and will consider the projected impact of the waiver plan on all State residents, regardless of the type of coverage they would have had absent the waiver.</p>
	45 C.F.R. § 155.1308(f)(3)(iv)(B) Affordability Requirement	<p>A section 1332 waiver complies with the affordability guardrail if healthcare coverage under the waiver is forecast to be as affordable overall for State residents as coverage absent the waiver, in the aggregate.</p> <p>Affordability refers to State residents' ability to pay for healthcare expenses relative to their incomes and will generally be measured by comparing out-of-pocket costs²⁸ for health coverage and services to State residents' incomes. This guardrail generally should be forecast to be met in each year the waiver would be in effect.</p> <p>Include in the waiver application:</p> <ol style="list-style-type: none"> 1. Analysis and supporting data establishing that the waiver satisfies the affordability guardrail. This includes information on estimated individual out-of-pocket costs²⁹ by income as a percentage of the Federal Poverty Level (FPL), health insurance status, health care

²⁷ See the 2022 final rule, 86 FR at 53465.

²⁸ Out-of-pocket spending for health care includes premiums (or equivalent costs for enrolling in coverage) net of premium tax credits, deductibles, co-pays, and coinsurance. Spending for services not covered can also be taken into account if these services are affected by the section 1332 waiver proposal. See the 2022 final rule, 86 FR at 53467.

²⁹ See the 2022 final rule, 86 FR at 53473.

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		<p>spending burden, geography, plan type, and age group, for health coverage that would be available both with and absent the waiver.³⁰</p> <p>2. How the State’s proposed waiver plan would impact individuals who experience high health care spending burdens relative to their incomes.</p> <p>The Departments’ assessment will focus on the coverage residents are projected to purchase rather than the coverage to which residents have access and will consider the waiver proposal’s impact on all State residents, regardless of the type of coverage they would have had absent the waiver.</p>
	<p>45 C.F.R. § 155.1308(f)(3)(iv)(C) Scope of Coverage Requirement</p>	<p>A section 1332 waiver complies with the coverage guardrail if a comparable number of State residents are forecast to have coverage under the section 1332 State plan as would have had coverage absent the waiver.³¹ Coverage refers to Minimum Essential Coverage (MEC) as defined in 26 U.S.C. 5000A(f) and “comparable” means that the forecasted number of covered individuals under the waiver is no less than absent the waiver. This guardrail generally should be forecast to be met in each year the waiver would be in effect.</p> <p>Include in the waiver application:</p> <ol style="list-style-type: none"> 1. Analysis and supporting data establishing that the waiver satisfies the coverage guardrail, including information on the number of individuals covered by income, health expenses, health insurance status, and age group, with and without the waiver, including year-by-year estimates. 2. Identify any groups of individuals, including underserved individuals, who are more or less likely to be covered under the waiver than without the waiver. <p>The Departments’ assessment will focus on the coverage residents are projected to purchase rather than the coverage to which residents have access and will consider the impact on all State residents, regardless of the type of coverage they would have had absent the waiver. For section 1332 waiver plans that only modify the individual market, projected changes in enrollment in other forms of coverage (including Medicaid and employer-sponsored insurance) will be considered in evaluating the number of residents with coverage under the waiver. The Departments’ assessment will also consider whether the waiver sufficiently prevents gaps in or discontinuations of coverage.</p>

³⁰ The Departments may ask for additional stratification. For example, if a waiver proposes an intervention focused on a specific diagnosis, income, or age group, the Departments might ask for data specific to the impacted population relative to the rest of the Exchange population. The Departments might also ask for the projected impact of specific components of the waiver separately.

³¹ See the 2022 final rule, 86 FR at 53469.

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	<p>45 C.F.R. § 155.1308(f)(3)(iv)(D)</p> <p>45 C.F.R. § 155.1308(f)(4)(i)-(iii)</p> <p>Deficit Neutrality Requirement</p>	<p>A section 1332 waiver complies with the deficit neutrality guardrail if the projected Federal spending net of Federal revenues under the waiver is equal to or lower than projected Federal spending net of Federal revenues absent the waiver.³² The waiver must not increase the Federal deficit relative to a scenario without the waiver over the 10-year budget plan period and the waiver period (up to 5 years). A waiver that increases the Federal deficit in any one year is less likely to be approved.</p> <p>Include in the waiver application:</p> <ol style="list-style-type: none"> 1. Analysis showing yearly changes in the Federal deficit (i.e., revenues less spending) due to the waiver. 2. A description of all Federal costs and savings associated with the program, including Federal administrative costs, forgone tax collections, and any other costs that the Federal Government might incur, if applicable. 3. The 10-year budget plan should describe the projected changes in Federal spending³³ and Federal revenues³⁴ attributed to the waiver for each of the 10 years. 4. The 10-year budget plan should assume the section 1332 waiver will continue permanently but should not include Federal spending or savings attributable to any period outside the 10-year budget window. <p>The Departments will consider a variety of factors when evaluating the impact of a waiver on the Federal deficit, including the likelihood, accuracy, and timing of projected spending and revenue effects.</p> <p>Note that when a State would rely on CMS for services in support of the State's section 1332 waiver plan pursuant to the Intergovernmental Cooperation Act (ICA), the State would be required to cover CMS's costs.³⁵</p>

³² See the 2022 final rule, 86 FR at 53470.

³³ The projected effect on Federal spending should include all changes in Federal financial assistance and other direct spending, such as changes in Medicaid spending (while holding the State's Medicaid policies constant) that would result from the waiver. This also includes all administrative costs to the Federal Government, including any changes in IRS administrative costs, Federal Exchange administrative costs and other administrative costs associated with or alleviated by the waiver. See P.L. 90-577 and the 2022 final rule, 86 FR at 53473.

³⁴ The projected effect on Federal revenue should include all changes in income, payroll, or excise tax revenue, as well as any other forms of revenue (including user fees), that would result from the waiver. This includes, for example, changes in the amount paid by the Federal Government for PTC, small business tax credits, or other health coverage tax credits; changes in the amount of employer shared responsibility payments collected by the Federal Government; and changes in income and payroll taxes resulting from changes in tax exclusions and deductions.

³⁵ CMS operates the Exchange information technology platform (the Federal platform) utilized by the Federally-facilitated Exchanges (FfEs) and some State Exchanges (referred to as "State-based Exchanges on the Federal platform" or "SBE-FPs"). For technical, operational, and fiscal efficiency, the Federal platform is generally designed to support uniform administration across States. However, CMS is open to inquiries and discussion with States interested in leveraging components of the Federal

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		<p>The Departments will not consider costs for CMS services covered under the ICA as an increase in Federal spending resulting from the State's waiver plan for purposes of the deficit neutrality analysis.³⁶</p> <p>This could include costs associated with the development and operation of customized or specialized technical or operational capabilities. For example, several States contract with CMS to access EDGE server data related to issuer-specific claims and other information necessary to administer a State high-risk pool/State reinsurance program.</p> <p><i>Note:</i> States should describe in the application and implementation plan if the waiver proposal requires assistance from CMS.</p> <p>Additional information may be required to facilitate evaluation of the State's estimates and calculation of pass-through amounts by the Departments.</p>
	<p>45 C.F.R. § 155.1308(f)(4)(i) – (iii)</p> <p>Actuarial analyses and actuarial certifications</p> <p>Economic analyses</p> <p>Data and assumptions</p>	<p>For purposes of demonstrating the waiver proposal meets the four statutory guardrails discussed above and other waiver analyses, the State should consider a baseline scenario in which there is no State waiver plan in effect, and should compare premiums, comprehensiveness, and coverage under the without-waiver baseline scenario for each year to those projected under the waiver for each year of the waiver. For waivers that impact the individual market, data used to produce these projections might include overall and Second Lowest Cost Silver Plan (SLCSP) premiums.</p> <p>In addition, the actuarial and/or economic analyses should include:</p> <ol style="list-style-type: none"> 1. A detailed description of how each component of the waiver will impact the individual and/or small group markets. 2. A projection of the following items separately under both a without-waiver baseline scenario and a with-waiver scenario for each year of the waiver: <ol style="list-style-type: none"> a. Number of non-group market enrollees by income as a share of FPL (0% - 99%, ≥100% to ≤150%, >150% to ≤200%, >200% to ≤250%, >250% to ≤300%, >300%- ≤400%, and greater than 400% FPL), by PTC eligibility, and by plan. b. Overall average non-group market premium rate (i.e., total individual market premiums divided by total member months of all enrollees). c. For waivers impacting the individual market: <ol style="list-style-type: none"> i. the gross SLCSP rate for a State subsidy program for a representative consumer (e.g., a 21-year-old non-smoker), by

platform to implement new models through section 1332 waivers. States should engage with CMS early in the section 1332 waiver application process to determine whether the Federal platform can accommodate State requests.

³⁶ See the 2022 final rule, 86 FR at 53473.

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		<p>rating area and, if applicable, issuer-specific service area (where issuers have service areas that are smaller than rating areas);</p> <ul style="list-style-type: none"> ii. a projection for each year of the waiver for: aggregate premiums, PTC,³⁷ and any applicable State subsidy amounts; and iii. the State's age rating curve or a statement that the Federal default is used. <p>d. For waivers impacting the small group market:</p> <ul style="list-style-type: none"> i. the number of small group market enrollees by income as a share of FPL (0% - 99%, ≥100% to ≤150%, >150% to ≤200%, >200% to ≤250%, >250% to ≤300%, >300%- ≤400%, and greater than 400% of the FPL), by PTC-eligibility, and by plan; and ii. the average small group market premium rate (i.e., total individual market premium divided by total member months of all enrollees). <ul style="list-style-type: none"> 3. Exchange user fee for FFE or SBE-FP States. 4. Documentation of all assumptions and methodology used to develop the projections, including the projected rate of growth of health care spending. <p>In addition, States considering establishing a State-operated high-risk pool/State reinsurance program should use a baseline scenario in which there is no State or Federal funding for a State-operated high-risk pool/State reinsurance program and should compare premiums and coverage under the without-waiver baseline scenario for each year to those projected under the waiver proposal. In addition to the information above, the actuarial and economic analyses should include:</p> <ul style="list-style-type: none"> 1. a comprehensive description of the parameters of the State reinsurance arrangement, including projected funding levels; and 2. projected reimbursements under the program, along with the assumptions used to develop these.
7	<p>Implementation Requirements 45 C.F.R. § 155.1308(f)(4)(iv)</p> <p>Implementation timeline</p>	<p>Include a detailed draft timeline for the State's implementation of the proposed waiver and discussion of the implementation of the waiver plan. <i>If applicable</i>, address operational considerations related to use of the Federal platform (e.g., Does the State waiver proposal rely on CMS for services in support of the waiver plan? Does the waiver plan involve requests to customize or specialize Federal technical or operational capabilities?). In addition, the State should consider if there will be Federal</p>

³⁷ States may present projections of aggregate APTC in addition to, but not in lieu of, projections of aggregate PTC.

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		tax consequences for taxpayers in the State or associated Federal costs to the Internal Revenue Service (IRS). ^{38 39}
8	Additional Information 45 C.F.R. § 155.1308(f)(4)(v) and (g)	<p>Include additional information in support of the waiver application that is pertinent to the State's waiver plan, including, but not limited to:</p> <ol style="list-style-type: none"> 1. An explanation of whether the waiver increases or decreases the administrative burden on individuals, insurers, or employers, and, if so, how and why. 2. An explanation of whether the waiver will affect the implementation of ACA provisions that are not being waived in the State and at the Federal level. Explain whether implementation of or compliance with any section of the ACA would be impeded, frustrated, or otherwise adversely affected by implementation of the proposed waiver. 3. An explanation of how the waiver will affect residents who need to obtain health care services outside of the State as well as the States in which such residents may seek such services. 4. An explanation of how the State will provide the Federal Government with all information necessary to administer the waiver at the Federal level. 5. An explanation of how the State's proposal will address potential compliance, waste, fraud, and abuse within the State or in other States. 6. A description of any necessary coordination with the IRS or implications for information reported on Federal tax forms. States are encouraged to engage early with the Departments for any such proposals to ensure administrative feasibility. 7. The Departments may request additional information as needed to address public comments or issues that arise in reviewing the application.
9	Reporting Targets ⁴⁰ 45 C.F.R. § 155.1308(f)(4)(vi)	Include information on quarterly, annual, and cumulative targets to demonstrate that the waiver remains in compliance with the comprehensiveness, affordability, coverage, and the deficit neutrality guardrails. For example, a State might meet this requirement by proposing to continue to report the data required under 45 C.F.R. § 155.1308(f)(4) to support monitoring and evaluation of the waiver program. The State should

³⁸ As noted in the 2022 final rule, certain changes that affect IRS administrative processes may make a section 1332 waiver proposal infeasible for the Departments to accommodate. See 86 FR at 53473-74.

³⁹ A section 1332 waiver proposal that partly or completely waives one or more Federal tax provisions in a State may create administrative costs for the IRS. Costs associated with changes to Federal administrative processes that are not covered under the ICA will be considered in determining whether a waiver application satisfies the deficit neutrality requirement.

⁴⁰ OMB Control Number [0938-1389](#).

	HHS Regulatory Citation and Description	Comments
		<p>also include information about the data they will collect to measure the impact of the waiver for pass-through reports.</p> <p>Any changes in State law that impact the waiver should be reported. For the comprehensiveness requirement, if there is no change to the provision of the EHB identified in the benchmark plan, the State should indicate that it will report on any modifications from Federal or State law that impact EHB on an annual basis. States should also report information related to State programs that may impact PTC, such as State premium subsidies or cost-sharing subsidies.</p> <p><i>For State-operated high-risk pool/State reinsurance waivers and other waiver programs that impact premiums</i>, each year, the State should provide the actual SLCSF under the waiver and an estimate of the SLCSF as it would have been without the waiver, for a representative consumer in each rating area. Coverage and affordability metrics also should be reported on an annual basis.</p> <p><i>For coverage innovation programs</i>, States should also provide (as applicable) documentation of changes in premiums in the small group market, network adequacy monitoring, and State funding for programs offered under the waiver.</p>

Section 1332 Waiver Extension and Waiver Amendment Applications

Extensions: A State with an approved section 1332 waiver may request continuation of its approved waiver by submitting a waiver extension application.⁴¹ A waiver extension is an extension of an approved waiver under the existing waiver terms for up to five additional years.⁴²

Amendments: A State with an approved section 1332 waiver may request an amendment to the approved waiver by submitting a waiver amendment application.⁴³ A section 1332 waiver amendment is necessary for any State requesting to change a section 1332 waiver plan in a manner that is not otherwise allowable under the specific terms and conditions (STCs) of an approved waiver, that could impact any of the section 1332 statutory guardrails, or a change to the program design for an approved waiver. A State is not authorized to implement any aspect of the proposed waiver amendment without prior approval from the Departments.⁴⁴

A State wishing to both extend the time period of a current waiver and amend the 1332 waiver plan must submit both an extension and an amendment application. If a State with an approved section 1332 waiver is uncertain about whether an amendment application is needed, the State may engage with the Departments by contacting StateInnovationWaivers@cms.hhs.gov.

Description of Application Elements	Comments
HHS Regulatory Citations	Waiver Extension: 45 C.F.R. § 155.1332 Waiver Amendment: 45 C.F.R. § 155.1330 2022 final rule, 86 FR at 53483 - 53488
Overview of Application Procedures	States should submit all applications with adequate time to allow for both public comment and the Departments' review prior to the proposed implementation date and are encouraged to engage with the Departments early in their development of an extension or amendment application. Depending on the complexity of the waiver, it may be necessary to submit the extension or amendment letter of intent (LOI) or application earlier than suggested to ensure sufficient time for review prior to the planned implementation date. Since the review period for an amendment is at least 3 months longer than that for a waiver extension, States are highly encouraged to engage with the Departments at least 15

⁴¹ See section 1332(e) of the ACA and 45 C.F.R. § 155.1332. Also see the 2022 final rule, 86 FR at 53486-88.

⁴² States with approved section 1332 waivers can submit an amendment application to request a change that is not otherwise allowable under the STCs of the approved waiver, including changes that could impact any of the section 1332 statutory guardrails or a change to the State plan's design. See 45 C.F.R. § 155.1330 and the 2022 final rule, 86 FR at 53483-86.

⁴³ See 45 C.F.R. § 155.1330. Also see the 2022 final rule, 86 FR at 53483-86.

⁴⁴ States with approved section 1332 waivers can submit an extension application to request a continuation of their approved waiver under its existing terms. See section 1332(e)(5) and 45 C.F.R. § 155.1332. Also see the 2022 final rule, 86 FR at 53486-88.

Description of Application Elements	Comments
	<p>months prior to the existing waiver's end date if they are uncertain about whether an amendment application is needed.⁴⁵</p> <p>E-mail all letters of intent and applications to StateInnovationWaivers@cms.hhs.gov.</p>
Letters of Intent (LOIs)	<p>The State must submit an LOI in electronic format to the Departments to notify them of the State's intent to request an extension or amendment of its approved waiver plan. For:</p> <ul style="list-style-type: none"> • <i>Extensions</i>: States must submit the LOI at least one year prior to the waiver's end date.⁴⁶ • <i>Amendments</i>: States are encouraged to submit the LOI at least 15 months prior to proposed implementation of the amendment.⁴⁷ <p>LOIs should include, for:</p> <ul style="list-style-type: none"> • <i>Extensions</i>: a detailed description of the requested extension period (of up to 5 years beyond the waiver's current end date).⁴⁸ • <i>Amendments</i>: the proposed changes to the waiver plan and their implementation date(s).⁴⁹ <p>The Departments will respond to the State's LOI within approximately 30 calendar days of receipt. The response letter will confirm whether the change(s) described necessitate a waiver extension or amendment application and will identify information the State needs to submit in its waiver extension or amendment application.⁵⁰</p>
Timeline and Process for Waiver Extension and Waiver Amendment Applications	<ol style="list-style-type: none"> 1. The State must submit its section 1332 waiver extension or waiver amendment application in writing in electronic format, consistent with the format and manner applicable to initial waiver applications under 45 C.F.R. § 155.1308(a). 2. The Departments will conduct a preliminary review of a State's section 1332 waiver extension or amendment application and provide a preliminary determination as to whether an application is complete within approximately 30 calendar days after an extension application is submitted or 45 calendar days after an amendment application is submitted. 3. Once the Departments have made a preliminary determination that the waiver extension or amendment application is complete, the application will be made public through the CMS website and a 30-day Federal public comment period will commence while the extension or amendment application is under review.

⁴⁵ See the 2022 final rule, 86 FR at 53484.

⁴⁶ See the 2022 final rule, 86 FR at 53484-86.

⁴⁷ See the 2022 final rule, 86 FR at 53487.

⁴⁸ See the 2022 final rule, 86 FR at 53487.

⁴⁹ See the 2022 final rule, 86 FR at 53484.

⁵⁰ See the 2022 final rule, 86 FR at 53484 and 53487.

Description of Application Elements	Comments
	<p>4. The determination that the section 1332 waiver extension or waiver amendment application is complete will also mark the beginning of the review period for the waiver for the Secretaries to approve, deny, or request more information regarding the extension or amendment of the State's approved waiver plan. This review period is no longer than 90 calendar days for a waiver extension application (as outlined in section 1332(e) of the ACA) or 180 calendar days for a waiver amendment application (as outlined in 45 C.F.R. § 155.1316).⁵¹</p> <p>If, after the extension or amendment application has been determined complete, the Departments find that content is missing, additional information is required, or the State needs to respond to public comments received during the Federal comment period, the Departments will notify the State. The State or the Departments may request a pause in the review process to accommodate additional analyses in response to questions raised by the Departments or during the public comment period.</p>
Application Process: Description of Application	<p>Include a detailed description of the extension or amendment application, including the desired time period (up to 5 years) for the waiver extension or amendment.</p> <p>For a waiver extension application, the State must confirm or otherwise demonstrate there are no changes to the current waiver other than an extension of the time period for the waiver and any changes that are allowable under the waiver's STCs.⁵² For a waiver amendment application, the State must demonstrate how the approved waiver plan combined with any proposed amendments impacts the section 1332 statutory guardrails.⁵³</p>
Application Process: Evidence of State authority	<p>Include evidence of sufficient authority under State law(s) to meet the ACA section 1332(b)(2)(A) requirement for authority to pursue a waiver extension or waiver amendment application. For an extension or amendment application based in the same authority as the approved waiver plan, the State may simply restate the evidence of authority provided in its initial waiver application.⁵⁴</p>
Application Process: Public notice and input⁵⁵	<p>An explanation and evidence of the process to ensure meaningful public input on the extension or amendment application, which must include:⁵⁶</p>

⁵¹ Federal public comment periods are held concurrent with the Departments' review of applications and do not extend the review timeline.

⁵² See the 2022 final rule, 86 FR at 53487.

⁵³ See the 2022 final rule, 86 FR at 53484-86.

⁵⁴ See the 2022 final rule, 86 FR at 53485 and 53487.

⁵⁵ See section 2 of the 1332 waiver application checklist (above) for a description of how requirements set forth in 45 C.F.R. § 155.1312 may be modified during an emergent situation, as set forth in 45 C.F.R. § 155.1318.

⁵⁶ A state may use its annual public forum for the dual purpose of gathering input on the progress of its existing waiver and on a proposed waiver extension or amendment. See the 2022 final rule, 86 FR at 53485 and 53487.

Description of Application Elements	Comments
	<ol style="list-style-type: none"> 1. For a State with one or more Federally recognized Indian tribes within its borders, a separate process for meaningful consultation with such tribes, and written evidence of the State’s compliance with this requirement; 2. Publicly posting the submitted LOI on the State’s website to ensure the public is aware the State is contemplating a waiver extension or waiver amendment application; and 3. Publicly posting the waiver extension or waiver amendment application on the State’s website upon its submission of the application(s) to the Departments.
Application Process: Draft timeline for implementation	<p>Include an explanation of how the State will provide the Federal Government with all information necessary to administer the waiver at the Federal level for the duration of the extension or amendment.</p> <p><i>For a waiver extension</i>, include a timeline and discussion of implementation of the waiver plan during the extension period. For an application for an extension of an approved waiver plan with no change, the State may simply restate that there is no change to the implementation plan provided in its initial waiver application.</p> <p><i>For a waiver amendment</i>, include an implementation plan with operational details (if appropriate) to demonstrate that the section 1332 waiver would maintain uninterrupted operations of the Exchange in the State, and provision of adequate notice for stakeholders and health insurance issuers potentially affected by the proposed amendment to take necessary action, should the section 1332 waiver amendment be approved.⁵⁷</p>
Application Process: Economic or actuarial analyses and certifications	<p>Include updated economic or actuarial analyses and certifications for the extension or amendment period. Such analyses should address any changes since approval of the initial 1332 waiver application in State or Federal law, regulations, or sub-regulatory guidance, the State insurance market, or the waiver program that are allowable under the STCs, that impact waiver assumptions and projections. The narrative should also explain any proposed technical changes the State has not previously shared with the Departments via its reporting requirements.</p> <p>For an amendment, similar to an initial waiver application, the analyses must also identify the impact of the amendment on the statutory guardrails and include both summary and detailed explanations and projections of the impact on the no waiver, the existing waiver, and the waiver amendment scenarios using data from recent experience. These analyses must also include an explanation of the estimated impact,</p>

For a **waiver extension** application, the state does not have to meet all requirements outlined for a new waiver application (e.g., holding two public hearings and providing a 30-day comment period). The state may determine how best to ensure the opportunity for meaningful public input on the extension request. For example, the state may choose to hold a hearing or provide an amended comment period, or a combination. A **waiver amendment application** should align with the public notice and input guidance for initial 1332 waiver applications described in section 2 of the initial waiver application checklist above.

⁵⁷ See the 2022 final rule, 86 FR at 53484.

Description of Application Elements	Comments
	<p>if any, of the section 1332 waiver amendment on pass-through funding.⁵⁸ In addition, the analyses must include the assumptions used to develop the projections.</p> <p>For an extension, the application should include brief, updated economic and actuarial analyses that include updated projections and assumptions for the 5-year extension period. The assumptions that go into the analyses may only need to be updated for the second 5 years of a 10-year budget (i.e., a table with updated projections and assumptions) if there have been no significant policy changes impacting the assumptions used to create the 10-year budget in the State's most recent application.⁵⁹</p> <p>For example, for State-operated high-risk pool/State reinsurance waivers, the economic and actuarial analyses should include, at a minimum, for both the with-waiver and without-waiver baseline scenarios, 5-year projections for:</p> <ul style="list-style-type: none"> • total Exchange enrollment including: <ul style="list-style-type: none"> ○ subsidized (i.e., APTC) enrollment on the Exchange; ○ unsubsidized enrollment on the Exchange; • enrollment off the Exchange, to the extent available; • Statewide average SLCSP premiums (aggregate and per member per month (PMPM));⁶⁰ • Statewide average gross and net premiums (aggregate and PMPM); • APTC (aggregate and PMPM); • State funding for the waiver plan; • State reinsurance reimbursements, if applicable; and • pass-through funding (e.g., Federal PTC savings net any offsets, such as increased user fees), if applicable.
Application Process: List of provision(s) of the law that the State seeks to waive and reason for the specific request(s).	<p>Provide a list of provision(s) of the law that the State seeks to waive and reasons for the specific request(s), with a description of each provision the State is seeking to waive and how it will facilitate the State's plan.⁶¹ For an extension or amendment application based on the approved waiver plan with no change, the State may simply restate that there is no change to the provision waiver provided in its initial waiver application.</p> <p>If the State is seeking pass-through funding, include an explanation of how the waiver would result in individuals not qualifying for PTCs, small business tax credits, or cost-sharing reductions for which they would otherwise be eligible in the absence of the waiver. Also explain how the State plans to use the pass-through funding.⁶²</p>

⁵⁸ See the 2022 final rule, 86 FR at 53484-86.

⁵⁹ See the 2022 final rule, 86 FR at 53487.

⁶⁰ Unlike for new waiver applications, rating area-level premium data is not required for waiver extension applications.

⁶¹ States planning to submit amendment applications can find additional information about waivable provisions in section 4 of the section 1332 waiver application checklist above.

⁶² See 45 C.F.R. § 155.1322.

Description of Application Elements	Comments
Application Process: Preliminary evaluation data and analysis of observable outcomes	<i>For a waiver extension application only:</i> Include preliminary evaluation data and analysis of observable outcomes from the existing waiver program, including quantitative or qualitative information describing why the State believes the program did or did not meet the statutory guardrails. For example, the State should provide information comparing the originally projected impact of the waiver to the actual outcomes observed (e.g., premiums, enrollment, expected claims reimbursements). ⁶³
Application Process: Additional information	The Departments may request additional information and/or analysis to evaluate and reach a decision on the requested extension or amendment. ⁶⁴

⁶³ See the 2022 final rule, 86 FR at 53487.

⁶⁴ See the 2022 final rule, 86 FR at 53485-87.