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## Health and Human Services and Treasury Letter to Governors Promotes Affordable Care Act Innovation Waivers

On March 13, the Centers for Medicare & Medicaid Services (CMS), in coordination with the U.S. Department of the Treasury, issued a letter to governors encouraging states to take advantage of the Affordable Care Act's (ACA) Section 1332 innovation waivers.

Section 1332 waivers allow states to modify certain ACA requirements, including the essential health benefits requirement and the individual and employer shared responsibility provisions. States cannot make changes to a state Medicaid program through a Section 1332 waiver, although they may submit a Section 1115 Medicaid waiver alongside a Section 1332 ACA waiver.

Critically, a state must meet the following criteria to be approved for a Section 1332 waiver:

- The proposed changes must provide coverage at least as comprehensive as coverage required under the ACA.
- The proposed changes must limit out-of-pocket spending to ACA levels.
- The proposed changes must cover at least the same number of individuals as the ACA.
- The proposed changes cannot increase the federal deficit.

States with approved applications for Section 1332 waivers receive “pass-through funding associated with resulting reductions in federal spending on Marketplace financial assistance consistent with the statute.” To date, only a handful of states have submitted a Section 1332 waiver request to the U.S. Department of Health and Human Services (HHS) or passed state legislation authorizing the submission of such a waiver to the agency. Currently, only Hawaii has received approval to administer a Section 1332 waiver.

The letter emphasizes HHS' commitment to “empower states with new opportunities that will strengthen the health insurance markets.” HHS is highlighting Section 1332 waivers in accordance with the administration's Jan. 20 ACA executive order that calls on federal agencies to alleviate the “burdens of the ACA.” Please see the *Health Matters* update entitled “[President Trump Issues Executive Order 13765 on the Affordable Care Act](#)” for more detail.

The letter also identifies Section 1332 waivers that implement a high-risk pool or state-operated reinsurance program as “an opportunity for states to lower premiums for consumers, improve market stability, and improve consumer choice” and specifically notes that Alaska’s Section 1332 waiver application seeks to implement a state-operated reinsurance program.

The letter concludes with an encouragement to states to apply for these waivers, noting that HHS and Treasury will work with states to approve Section 1332 applications in a timely manner. The agencies indicate that they will be releasing a checklist with additional information to assist states in applying for Section 1332 waivers in the coming weeks.

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work or

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