Colorado: State Innovation Waiver

August 13, 2021

The U.S Department of Health & Human Services and the U.S. Department of the Treasury (collectively, the Departments) approved Colorado's application for an extension of its State Innovation Waiver (referred to as a "section 1332 waiver") under the Affordable Care Act (ACA) for an additional five years (for a waiver period of plan years (PYs) 2022 through 2026). Colorado's section 1332 waiver extension application sought to continue implementation of Colorado's state-based reinsurance program, which lowers premiums and results in more consumers in the state being covered. Actuarial analysis performed for Colorado's initial section 1332 waiver application estimated that premiums would be 16% lower on average across the state in 2020 than they would have been absent the waiver. The reinsurance program has surpassed that goal by achieving a 20.9% average statewide reduction in 2020, and it has maintained the 20% premium reduction in its second year (2021). As a result of Colorado's innovative waiver, the state will continue to receive, as pass-through funding, the Premium Tax Credit (PTC) savings, net of any federal costs attributable to the waiver, realized by the federal government due to lower premiums for individual health insurance coverage. This pass-through funding will cover a substantial portion of state costs for the reinsurance program. Overall, the program will result in lower consumer costs.

The Departments have determined that Colorado's section 1332 waiver plan meets the requirements outlined in section 1332(b)(1) of the ACA. Specifically, the section 1332 waiver is projected:

- to provide coverage at least as comprehensive as coverage provided without the waiver;
- to provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided without the waiver;
- to provide coverage to at least a comparable number of people as would be provided without the waiver; and
- to not increase the federal deficit.

The extension of Colorado's State Innovation Waiver under section 1332 of the ACA is approved subject to Colorado accepting specific terms and conditions (STCs). This waiver extension approval is effective for January 1, 2022 through December 31, 2026.

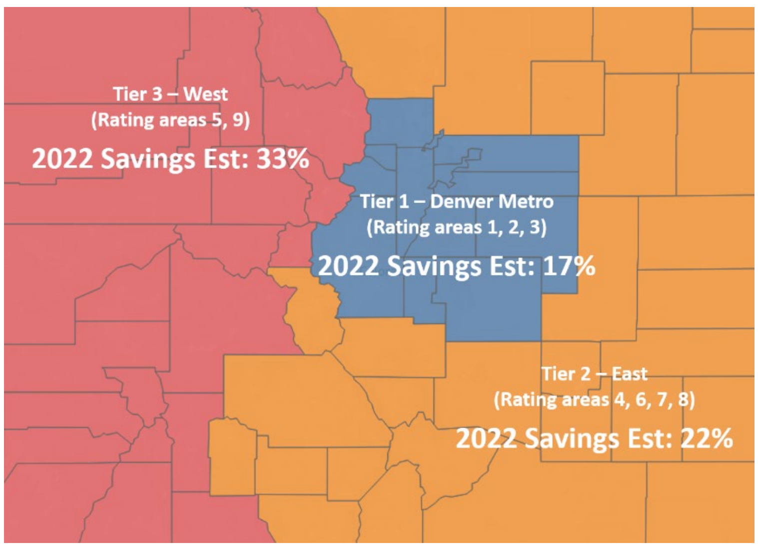
Summary of Colorado's Application for an Extension of its State Innovation Waiver under Section 1332 of the ACA

Colorado's application for an extension of its State Innovation Waiver under section 1332 of the ACA seeks to waive section 1312(c)(1) of the ACA—the requirement to consider all enrollees in a market to be part of a single risk pool, to the extent that it would otherwise require excluding total expected state reinsurance payments when establishing the market-wide index rate—in order to implement the state reinsurance program for PYs 2022 through 2026. The state's reinsurance program will continue to operate as a traditional, claims-based attachment-point reinsurance program by reimbursing qualifying non-group health insurers for a percentage of an enrollee's claims costs exceeding a specified threshold (or "attachment point") and up to a specified ceiling (or "reinsurance cap"). Specifically, in PY 2022, the program will reimburse claims between an attachment point of $30,000 and an estimated $400,000 cap according to a geographically tiered coinsurance rate of 43% for Tier 1, 50% for Tier 2, and 73% for Tier 3.

The state's law (HB19-1168) uses a three-tier coinsurance structure to target the reduction in the costs of claims (to carriers) by rating area to address the inequality of premiums in different geographic areas of the state, and to encourage carriers to enter parts of the state with less carrier participation (rural and mountain areas) as compared to areas with somewhat lower costs and premiums (metropolitan areas). The three tier targets for the reinsurance program are:

- Rating Areas 1, 2, and 3: Claim costs shall be reduced by between 15% and 20%;
- Rating Areas 4, 6, 7, and 8: Claim costs shall be reduced by between 20% and 25%; and
- Rating Areas 5 and 9: Claim costs shall be reduced by between 30% and 35%.

It is estimated that the overall claim costs will be reduced by an average of 21.7% when the three tiers are combined. Below are the PY 2022 projected average premium savings by geographic tier.



As a result of the section 1332 waiver extension approval, individual market consumers are expected to continue seeing lower premiums, which should attract new consumers while also keeping current consumers in the individual market. Colorado will receive pass-through funding to help offset a substantial portion of state costs for the state-based reinsurance program. Colorado projects that, under an extension of its section 1332 waiver, statewide premiums will be about 19.2% lower in PY 2022 than they would be without the waiver. In addition, Colorado predicts that individual market enrollment will be about 2.5% higher in PY 2022 than it would be without the waiver, due to lower premiums resulting from stabilization of the individual market. These projections were certified by independent actuaries and reviewed by the Departments.

Because the Colorado reinsurance program is expected to lower premiums on the second-lowest cost silver plan, the plan used to establish the value of the PTC, the federal government will spend less on PTC under the waiver than it would absent the waiver. As such, Colorado will receive pass-through funding to support the reinsurance program based on the amount of PTC that would have been provided to Coloradans absent the waiver but will not be provided under the waiver. This amount will be reduced, if necessary, to ensure deficit neutrality.

Section 1332: State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing residents with access to high-quality, affordable health insurance. These waivers provide states with the opportunity to develop strategies that best suit their individual needs. Through innovative thinking tailored to specific state circumstances, states can lower premiums for consumers, improve market stability, and increase consumer choice.

In order for a section 1332 waiver to be approved, the Departments must determine that the waiver meets statutory guardrails to provide coverage that is at least as comprehensive as the coverage provided without the waiver; provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as without the waiver; provide coverage to at least a comparable number of residents as without the waiver; and not increase the federal deficit.

State Innovation Waivers have been available since January 1, 2017; are approved for up to five-year periods; and can be extended. The Departments welcome the opportunity to work with states on section 1332 waivers. States interested in applying for a section 1332 waiver can find application tools and resources, including an application checklist and application templates, on the CMS website here.

The section 1332 waiver extension approval letter and STCs for Colorado can be found here:
https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-