



THE SECRETARY OF HEALTH AND HUMAN SERVICES

WASHINGTON, D.C. 20201

JUN 09 2016

The Honorable Peter Shumlin
Governor of Vermont
Montpelier, Vermont 05609-0101

Dear Governor Shumlin:

Thank you for your submission on April 25, 2016 of Vermont's application for a section 1332 State Innovation Waiver under the Affordable Care Act (ACA). Vermont is seeking to waive the ACA requirement to establish an internet portal for the Small Business Health Options Program (SHOP) and have enrollment continue to take place through issuers. The Department of Health and Human Services (HHS) and Department of the Treasury (the Departments) appreciate the careful consideration and analyses that you and your team have provided to assist us in the evaluation of your waiver application. The Departments have completed a preliminary review of the application in accordance with 45 CFR 155.1308(c). Pursuant to 45 CFR 155.1308(c)(2), I am writing to inform you that we have determined that the application is incomplete. We are providing you with notice that the following elements are missing or incomplete:

1) Actuarial analysis and certification and economic analyses to support the state's estimates that the proposed waiver will comply with section 1332's comprehensive coverage requirement, affordability requirement, and scope of coverage requirement (45 CFR 155.1308(f)(4)(i) and (ii)). Vermont's application does not include analyses sufficient to determine whether the number of individuals covered with the proposed waiver will remain the same as the number covered without the proposed waiver, as required by 45 CFR 155.1308(f)(4)(i) and (ii). The application explains why small employers who are currently offering insurance will find it easier to do so if the current process is continued under the waiver, than if an internet portal is required. However, the application does not include analysis on the effects of the waiver on coverage among new employers or among existing employers who are not currently offering coverage. A complete application would include a clear explanation as to why new insurers would not enter the Vermont market if an internet portal were provided and why new employers and existing employers who do not currently offer coverage would not be more likely to offer coverage if an internet portal were available.

The analysis on pages 11 through 15 argues that a SHOP online portal cannot increase coverage because the overall rate of uninsurance in Vermont is already low. However, the analysis in the application does not include an estimate of the rate of uninsurance among employees (and their families) in small firms. A complete application should include information on individual insurance rates specific to the small-employer market that would be affected by the waiver.

Since the application's conclusions about the affordability and comprehensiveness of coverage are derived from conclusions about the current number of employees with employer sponsored coverage and the application do not address new employers, the application also does not include analyses sufficient to determine whether the affordability and comprehensiveness requirements are met.

2) Economic analyses, including a detailed 10-year budget plan to support the state's estimates that the proposed waiver will comply with section 1332's federal deficit requirement (45 CFR 155.1308(f)(4)(ii)). Vermont's application states that since the proposed waiver will maintain Vermont's current enrollment process for small employers and funding mechanism, implementation of the waiver will not require additional federal funds. Appendix H also includes a detailed 10-year budget plan, to demonstrate that the waiver will not increase the federal deficit. However, the budget plan is not consistent with the actuarial certification in Appendix E in terms of the proposed waiver's compliance with section 1332's scope of coverage requirement. The actuarial certification states that the waiver will not decrease coverage and might increase coverage. However, the budget plan assumes that the waiver will not increase or decrease coverage. The application should contain a clear statement about whether coverage will or will not increase under the waiver. If SHOP coverage is estimated to be higher under the waiver, then the estimated effect on the federal deficit should take into account any associated decreased Medicaid costs, decreased premium tax credit and cost sharing reductions costs, decreased individual responsibility payments, increased tax exclusions for employer-sponsored coverage and increased small business tax credit costs.

3) Data and assumptions used to demonstrate compliance with the waiver requirements (45 CFR 155.1308(f)(4)(iii)). As explained above, if the actuarial and economic analyses find that coverage will increase under the waiver, then the effect of the increased coverage on the federal deficit must be discussed. Such analysis of the deficit effect should use assumptions or data on the incomes and other characteristics of employees who will gain employer-sponsored coverage under the waiver. The assumptions or other information about these employees must be described.

4) Quarterly, annual and cumulative reporting targets (45 CFR 155.1308(f)(4)(vi)). Vermont's application provides a description for how Vermont proposes to satisfy the reporting requirements of a section 1332 waiver, but it does not specify which specific targets the state will use. Pursuant to 45 CFR 155.1308(f)(4)(vi), the application must provide information on the quarterly, annual and cumulative reporting targets that the state will be measuring and reporting on for the comprehensive coverage requirement, affordability requirement, scope of coverage requirement and federal deficit requirement. For example, with respect to the coverage requirement, the state could identify the information provided in table 5 of the application as annual reporting targets. Note that failure to meet these targets would not automatically mean that the state failed to materially comply with the requirements specified by the 1332 waiver.

The Departments welcome Vermont's submission of a revised section 1332 State Innovation Waiver application that provides the information identified above. Upon receipt of an application, the Departments will conduct a preliminary review within 45 days to determine if the application is complete. If you or your staff have questions, please feel free to contact Emily Barson, Director, Office of Intergovernmental and External Affairs, at (202) 690-6060.

Sincerely,

A handwritten signature in black ink that reads "Sylvia M. Burwell". The signature is written in a cursive style with a large initial 'S' and a prominent 'M'.

Sylvia M. Burwell

Cc: The Honorable Jacob J. Lew