



MAY - 7 2019

Administrator

Washington, DC 20201

The Honorable Greg Walden
Ranking Member
House Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Representative Walden:

Thank you for your continued interest in new state flexibility available under guidance recently issued interpreting section 1332 of the Patient Protection and Affordable Care Act (PPACA) (the 2018 guidance).¹ Working within the limitations of the PPACA, this 2018 guidance is an important element of the Administration's actions to expand options and lower costs for patients around the country. I wanted to take this opportunity to set the record straight and reaffirm this Administration's commitment to lowering healthcare costs, increasing consumer choices, and protecting our most vulnerable citizens, including those who have pre-existing conditions.

To be very clear, the 2018 guidance does nothing to erode the PPACA's pre-existing condition provisions, which cannot be waived under section 1332. Section 1332 does not permit states to waive Public Health Service Act requirements such as guaranteed availability and renewability of health insurance, the prohibition on using health status to vary premiums, and the prohibition on pre-existing conditions exclusions. Furthermore, a section 1332 waiver cannot be approved that might otherwise undermine these requirements. This Administration stands committed to protecting people with pre-existing conditions.

Under the PPACA, we have seen dramatically higher premiums and decreased options for millions of consumers, in large part due to the law's overly prescriptive mandates and excessive Federal government takeover of areas traditionally under state oversight. In 2019, the average monthly premium for a benchmark plan for a family of four on HealthCare.gov is now over \$1,500, which can easily exceed a family's mortgage. There are many areas of the country with far higher monthly premiums.² For example, a 60-year-old couple living in Grand Island, Nebraska, making \$70,000 a year, will need to pay over \$3,000 per month for the lowest cost silver plan available. That's almost \$38,000 per year for a plan with an \$11,100 deductible. That's over half their income.³

¹ *State Relief and Empowerment Waivers*, 83 Fed. Reg. 53575, Oct. 24, 2018, available at <https://www.govinfo.gov/content/pkg/FR-2018-10-24/pdf/2018-23182.pdf>

² ASPE 2019 Health Plan Choice and Premium in HealthCare.gov States, October 26, 2018, available at: <https://aspe.hhs.gov/system/files/pdf/260041/2019LandscapeBrief.pdf>

³ HC.gov 2019 Health Insurance Plans & Prices, available at: <https://www.healthcare.gov/see-plans/> (accessed on 5/6/19)

For millions of Americans, coverage this expensive is not a realistic option, and many choose to go without coverage at all. In fact, after average premiums rose by 21 percent, 1.3 million unsubsidized people walked away from the market in 2017⁴, the last year the prior administration oversaw open enrollment. While these higher premiums force some people to go uninsured, coverage is generally not optional for people with a pre-existing condition and so, without a subsidy, someone with a pre-existing condition must face the full burden of the PPACA's sky-high premiums. This Administration has not forgotten the people facing this hardship.

Section 1332 of the PPACA provides the discretion to approve a section 1332 state waiver plan if the following four statutory guardrails are met: affordability, comprehensiveness, coverage, and federal deficit neutrality. Section 1332 allows states to develop new healthcare programs and solutions that would be not permissible without a section 1332 waiver.

Unfortunately, guidance issued under the prior Administration in December 2015⁵ (the 2015 guidance) regarding section 1332 waivers had the effect of significantly restricting the innovation states could pursue. The prior Administration imposed a one-size-fits-all approach to these waivers, making it difficult for states to address the specific needs of their residents.

In October, the Administration issued guidance under section 1332 of the PPACA to provide states with significant opportunities to chart a different course for their markets through expanded flexibility. Section 1332 and the 2018 guidance ensure that consumers who wish to retain coverage similar to that provided under the PPACA can do so, but they empower states to take steps to stabilize their markets and allow more affordable coverage options that may be more attractive to individuals and families priced out of the current market, including people with pre-existing conditions.

Over the past two years, this Administration has approved seven section 1332 waivers authorizing reinsurance programs to help fund claims for people with high healthcare costs. These reinsurance programs provide much needed premium relief for people in the market and, in particular, for people with pre-existing conditions without other coverage options. These section 1332 waivers were all approved under the prior, more restrictive 2015 guidance. I believe, given the expanded flexibility discussed in the 2018 guidance, states will be able to develop additional healthcare programs and solutions that work for their residents.

As you know, some have criticized the state flexibility offered under the 2018 guidance, claiming that states will pursue section 1332 waivers that undermine their own individual market risk pools and make coverage more expensive for their own residents with pre-existing conditions. Again, I want to make clear that a section 1332 waiver cannot undermine coverage for people with pre-existing conditions. Moreover, any section 1332 waiver will need to carefully account for any impact on the individual market risk pool and guarantee that access to coverage is at least as comprehensive and affordable as would exist without the waiver.

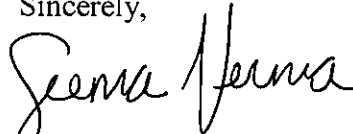
⁴ *Early 2018 Effectuated Enrollment Snapshot*, CMS, available at <https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2018-07-02-Trends-Report-1.pdf>

⁵ *Waivers for State Innovation*, 80 Fed. Reg. 78131, Dec. 16, 2015, available at <https://www.govinfo.gov/content/pkg/FR-2015-12-16/pdf/2015-31563.pdf>

So, if a state seeks to pursue the use of more affordable options, such as catastrophic plans or short-term limited duration plans, under a section 1332 state waiver plan, the state must ensure access to coverage that is overall as affordable and comprehensive for people who remain in the individual market risk pool.

Thank you again for your shared interest in bringing down healthcare costs and protecting our fellow Americans with pre-existing conditions. We remain focused on improving our nation's health care system by empowering states to innovate and develop new solutions to expand access to affordable and high value coverage options, and we look forward to working with you to achieve these goals. Should you have questions, please contact the CMS Office of Legislation at (202) 690-8220.

Sincerely,



Seema Verma