

2018-12-03

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### Repository Citation

Gershon R, Torri C. (2018). New ACA waiver directives signal changes for state health insurance marketplaces. Commonwealth Medicine Publications. <https://doi.org/10.13028/wsk0-v675>. Retrieved from [https://escholarship.umassmed.edu/commed\\_pubs/221](https://escholarship.umassmed.edu/commed_pubs/221)

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# New ACA waiver directives signal changes for state health insurance marketplaces

December 03, 2018



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The Trump Administration late last week issued a discussion paper with new [Section 1332](#) waiver flexibilities, which aim to lower barriers for states attempting to make changes to the Affordable Care Act (ACA). The discussion paper, [Section 1332 State Relief and Empowerment Waiver Concepts](#), provided additional information to guidance that was issued last month. Let's go over what this means and what may come next.

[Section 1332](#) of the ACA provides states with an opportunity to apply for changes to their ACA Marketplace structures. In order to take effect, proposed changes have to be approved by the United States Secretary of Health and Human Services (HHS), and in some cases the United States Treasury Secretary.

Available changes under ACA waivers, as allowed by the federal statute, include:

- Premium tax credits;
- Cost-sharing reductions;
- Small business credits;
- Employer and individual mandates; and
- Establishment of the Insurance Marketplaces and Qualified Health Plans

The Trump Administration's October guidance includes:

- Principles to be considered favorably by the Trump Administration, including access to affordable private market coverage, sustainable spending growth, state innovation, support for high-need individuals, and consumer-driven health care;
- Loosening of the administration's interpretation of requirements related to affordability, comprehensiveness, and number of people covered;
- Loosening of the requirement for state authorizing legislation;
- An increased ability for Federally Facilitated Exchanges to implement waivers; and
- Changes to calculation of Federal deficit neutrality requirement

Given the examples provided by Trump Administration discussion paper released November 29, states may try to use waivers to change the distribution of insurance subsidies, increase the use of plans that do not cover pre-existing conditions, or increase the use of plans with fewer covered benefits.

We expect more state applications for ACA waivers, given the loosened interpretation of statutory requirements. We also expect to see court challenges for approved waivers, as the loosened interpretation of statutory affordability, comprehensiveness, and coverage requirements may prove to be too loose when compared to statutory requirements.

While the Trump administration guidance superseded earlier Obama-era guidance, both the original statute and 2012 regulations are still in place. Allowing bigger changes to the ACA marketplace structures may not be allowed under the old statutory requirements. As ACA waiver activity heats up, here's a guide to what law and guidance is still in place:

<b>Statutes, regulations, guidance, and other communication</b>	
√	<a href="#">Section 1332</a> of the ACA, statute, 42 USC § 18052
√	Federal ACA waiver regulations, <a href="#">31 CFR § 33.100-128</a> ; <a href="#">45 CFR § 155.1300-1328</a>
X	2015 ACA waiver guidance, <a href="#">80 Fed. Reg. 78131</a> (December 15, 2016)
√	2018 ACA waiver guidance, <a href="#">83 Fed. Reg. 53575 (Oct. 24, 2018)</a>
√	<a href="#">November 2018 Discussion paper</a>

**Key:** √ = in place X = not in place