

[UPDATED 2/19/2019] State Health and Value Strategies has created a template to help states develop an application for a state innovation waiver under the Affordable Care Act (ACA) section 1332 to implement a state reinsurance program. Section 1332 gives states flexibility to waive certain ACA provisions and receive federal funding to implement state-based health care policies. Reinsurance programs are a proven method of reducing premiums and promoting competition and market stability. This template seeks to make application development as simple as possible by adapting language from the successful [Oregon application](http://healthcare.oregon.gov/DocResources/1332-application.pdf) and indicating where elements need to be filled in or otherwise customized.

Frequent State Health and Value Strategies partner Jason Levitis, former Counselor and ACA Implementation Lead at the U.S. Treasury Department, created the application template. The template has been updated to reflect the October 2018 guidance. It may be revised further, so be sure to check back to the [resource page](https://www.shvs.org/resource/application-template-for-section-1332-reinsurance-waiver/) to ensure you are working from the most current draft. For questions, contact Jason at jason.levitis@gmail.com.

**APPLICATION TEMPLATE FOR SECTION 1332 REINSURANCE WAIVER**

**Draft – 12/25/2018**

***Note to application drafters****: This document provides a template to help states develop an application for a state innovation waiver under section 1332 of the Affordable Care Act (ACA) to implement a state reinsurance program. The template is based on the successful*[*Oregon application*](http://healthcare.oregon.gov/DocResources/1332-application.pdf)*and has been used by several states that have applied for and been granted waivers. It has been revised to incorporate narrative elements suggested in the October 2018 1332* [*guidance*](https://s3.amazonaws.com/public-inspection.federalregister.gov/2018-23182.pdf) *and to reflect other changes, such as the expiration of the PCORI fee.*

*Section 1332 gives states flexibility to waive certain ACA provisions and receive federal funding to implement state-based health care policies. Reinsurance programs are a proven method of reducing premiums and promoting competition and market stability.*

*The Department of Health and Human Services and the Department of the Treasury (collectively “the Departments”) have approved seven state innovation waivers to implement state-level reinsurance programs (hereinafter referred to as “reinsurance waivers”). Under a reinsurance waiver, ACA rules requiring a single risk pool are eliminated to the extent they conflict with the reinsurance program, and the state receives federal “pass-through funding” to help pay for the reinsurance program based on federal premium tax credit savings due to lower premiums.*

*The Departments have encouraged additional states to apply for reinsurance waivers. In May 2017, Centers for Medicare & Medicaid Services (CMS) published a* [*checklist*](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf) *of elements needed in a reinsurance waiver application. The model was also highlighted in CMS’s November 2018 discussion paper on waiver concepts.*

*CMS has indicated that it would be acceptable, and even helpful, for additional states seeking these waivers to model their applications closely on prior successful applications. Reinsurance waivers are uniquely suited for this sort of application repurposing because they are generally approvable irrespective of specific-state conditions. Under section 1332, the Departments may approve a state innovation waiver only if it satisfies four statutory requirements, sometimes referred to as guardrails. Specifically, the waiver may not reduce the number of people with health coverage or the affordability or comprehensiveness of that coverage, and it may not increase the federal deficit. Reinsurance waivers almost invariably satisfy these guardrails, since their only material market impact is reducing premiums, and their impact on the federal deficit can be regulated by adjusting pass-through funding. Accordingly, the application narratives detailing specific state conditions and guardrails compliance can be simple and pro forma.*

*This template seeks to make application development as simple as possible by adapting language from the successful* [*Oregon application*](http://healthcare.oregon.gov/DocResources/1332-application.pdf) *and indicating where elements need to be filled in or otherwise customized. Oregon officials have generously consented to their application being used in this way.*

*The October 2018 guidance does not generally have any impact on reinsurance waivers – they readily satisfied the guardrails under the old rules and appear to do so under the new rules, which are generally more flexible. The rules for pass-through funding are generally unchanged. However, the guidance does encourage applications to explain how a waiver is consistent with five “principles” enumerated in the guidance. Reinsurance waivers support several of these principles, so the updated template includes new language to explain how.*

*The template includes model language that may be used for the narrative portion of the application. It also includes placeholders for other pieces that should be included:*

* *The actuarial and economic analysis*
* *The state legislation authorizing the application*
* *Copies of public communications documenting the notice and comment period and public hearings*
* *Copies of communications documenting consultation with any Indian tribes located in the state*
* *Copies of any written comments received during the state notice and comment period*

*One application element that generally requires substantial resources to produce is the actuarial and economic analysis, which provides state-specific forecasts of the waiver’s impact. Most states have contracted with private actuarial firms to develop this section. Several major actuarial firms have experience preparing these documents and can produce them relatively quickly in keeping with federal requirements. Other states may wish to undertake the development of this element themselves, but they should expect that doing so will require a longer runway and more back-and-forth with the Departments.*

*Successfully applying for a waiver also involves other actions that require substantial lead time. For example, section 1332 requires states to pass legislation authorizing the pursuit of a waiver before an application is submitted, and the actuarial analysis likely requires the state to request data from issuers. For a list of key steps to be thinking about, see the State Health and Value Strategies* [*To-Do List*](https://www.shvs.org/wp-content/uploads/2018/12/SHVS-Planning-Ahead-Summary-FINAL-UPDATED-DEC.-2018.pdf) *for states considering a 1332 reinsurance waiver for 2020.*

*Throughout this document, [square brackets] set off notes to drafters or indicate that customization is needed.* Italics *indicate notes to drafters. Text shown in gray indicates material based on the Oregon application that needs to be substantially re-written for another state’s application and that is provided only as a sample.*

*[Insert state seal in place of Oregon’s]*



***[Insert state name]* 1332 Draft Waiver Application**

[Insert *date*]

*[Insert name and contact information of responsible agency – generally the agency that regulates health insurance]*

# *[Note to drafters: The Table of Contents is hyperlinked to the text and page numbers of sections headings. To update it, click on the table and then on “Update Table.”]*

# Table of Contents

[Table of Contents 1](#_Toc510795595)

[Executive Overview 2](#_Toc510795596)

[I. *[Insert state name]* 1332 Waiver Request 5](#_Toc510795597)

[II. Compliance with Section 1332 Guardrails 6](#_Toc510795598)

[A. Scope of Coverage Requirement (1332(b)(1)(C)): 6](#_Toc510795599)

[B. Affordability Requirement (1332(b)(1)(B)): 6](#_Toc510795600)

[C. Comprehensiveness Requirement (1332(b)(1)(A)): 6](#_Toc510795601)

[D. Deficit Neutrality Requirement (1332(b)(1)(D)): 7](#_Toc510795602)

[III. Description of the *[Insert state name]* 1332 Waiver Proposal 8](#_Toc510795603)

[A. Authorizing Legislation 8](#_Toc510795604)

[B. Federal Pass-Through Funding 9](#_Toc510795605)

[IV. Draft Waiver Implementation Timeline 9](#_Toc510795606)

[V. Additional Information and Reporting 10](#_Toc510795607)

[A. Administrative Burden 10](#_Toc510795608)

[B. Impact on Residents Who Need to Obtain Health Care Services Out-of-State 11](#_Toc510795609)

[C. Ensuring Compliance, Waste, Fraud and Abuse 11](#_Toc510795610)

[D. State Reporting Requirements and Targets 12](#_Toc510795611)

[VI. Supporting Information and Miscellaneous 13](#_Toc510795612)

[A. 45 CFR 155.1308(f)(4)(i) – (iii) 13](#_Toc510795613)

[VII. Public Comment and Tribal Consultation 13](#_Toc510795614)

[A. Public Comment 13](#_Toc510795615)

[B. Tribal Consultation 13](#_Toc510795616)

# Executive Overview

**Request**

The State of *[insert state name]*, through its *[insert name of responsible agency]*, submits this 1332 State Innovation Waiver request to the Center for Medicare and Medicaid Services (CMS), a division of the United States Department of Health and Human Services (HHS), and the Department of the Treasury. This request seeks waiver of Section 1312(c)(1) under Section 1332 of the Affordable Care Act (ACA) for a period of [five] years beginning in the [2020] plan year to develop a state reinsurance program. This waiver will not affect any other provision of the ACA but will result in a lower market-wide index rate, thereby lowering premiums and reducing the federal cost of the premium tax credit (PTC) and advance payments of the PTC (APTC).

**Basis for Request and Goal of Reinsurance Program**

*[****Note to drafters****: This paragraph and the next one may be customized to reflect state-specific conditions and goals.]* During the last few years, *[Insert state name]*’s individual health insurance market has seen substantial instability. [Several insurers have withdrawn from the state or shrunk their geographic footprint, premiums have increased significantly, and plans have narrower networks.]

The creation of a state reinsurance program through a 1332 waiver will bring certainty and stability to *[Insert state name]*’s individual health insurance market through state-based innovation. By reimbursing insurers for high-cost claims, the reinsurance program will spread risk across the broader *[Insert state name]* health insurance market, thereby lowering premiums and increasing access to affordable private coverage. The program is also expected to encourage insurers to maintain and possibly expand geographic coverage areas.

**Operation, Funding, and Impact of the *[insert state name]* Reinsurance Program**

*[Insert reference to enacted state legislation authorizing the waiver, for example “HB 2391”]*, signed into law on *[insert date]*, establishes a reinsurance program to be administered by *[insert name of responsible agency]*. Total funding for the reinsurance program for [2020] is estimated to be approximately *[insert total funding for reinsurance program in the first year of the waiver]*. The programwill be funded through *[insert state funding source, e.g., the general fund or a particular assessment]*. *[Insert reference to authorizing legislation]* makes the operation of the reinsurance program contingent on this waiver request. [***Note to drafters****: Pass-through funding under a waiver is generally equal to the difference between federal PTC and APTC cost under the waiver and federal PTC and APTC cost absent the waiver. Because PTC and APTC savings a created by the reinsurance program through premium decreases, the operation of the reinsurance program should be made contingent on waiver approval.]* Through this waiver request, *[insert state name]* seeks federal pass-through funds to partially offset state expenditures.

*[****Note to drafters****: The following paragraph should be customized to reflect the state’s specific plan. The language here is based on an attachment-point model of reinsurance. There are also* [*conditions-based models*](http://familiesusa.org/product/alaska-reinsurance-1332-waiver-approach-can-work)*, like the one created under* [*Alaska’s reinsurance waiver*](https://www.commerce.alaska.gov/web/Portals/11/Pub/Headlines/Alaska%201332%20State%20Innovation%20Waiver%20June%2015%202017.pdf?ver=2017-06-26-091456-033)*. This paragraph should also note if the reinsurance program requires or incentivizes issuers or others to manage health care cost and utilization for individuals whose risk is covered by the reinsurance program.]* [The reinsurance program will reimburse qualifying individual health insurers for a percentage of an enrollee’s claims between an attachment point and a cap. In [2020], the program will likely reimburse *[insert reinsurance percentage]* percent of claims between the attachment point and an estimated *[insert reinsurance cap]* cap. *[Insert name of responsible agency]* will set the program parameters through administrative rule. *[Insert name of responsible agency]* estimates that the reinsurance program, as part of the waiver proposal, will result in a net premium decrease of *[insert estimated premium decrease]* percent in *[2020]* and *[insert estimated premium decrease]* percent in *[2021]*.]

**Compliance with Section 1332**

*[Insert state name]*’s waiver, if approved, will reduce premiums and increase affordability of health insurance in *[insert state name]*’s non-group health insurance market. We estimate that, as a result, enrollment in the individual market will increase by approximately *[insert percent change]* in [2020], *[insert percent change]* in [2021], and *[insert percent change]* in *[insert additional representative time period]*. (See Table 1 below.) The waiver will not impact the comprehensiveness of coverage in *[insert state name]*, except insofar as individuals with coverage have more comprehensive coverage than those without. The waiver will have no material impact on premiums, comprehensiveness, or enrollment in group coverage or public programs. The reduction in individual health insurance premiums, including premiums for the second-lowest-cost silver plan, will reduce net federal spending by about *[insert figure]* in each of five years the waiver is in place. The state requests federal pass-through funding equal for each year in the amount of the federal savings. Accordingly, the waiver will not increase the federal deficit in any year of the waiver. In addition, the waiver will advance several of the principles described in the section 1332 guidance released in October 2018, including expanding access to private coverage and supporting and empowering those in need.

*[****Note to drafters****: The following table was included in Oregon’s application and is shown here as a sample. States should include a similar table based on the state’s actuarial and economic analysis. The table should include, at a minimum, estimates under the waiver and absent the waiver for one or more years for average premiums, non-group enrollment, subsidized enrollment, average PTC/APTC, and total federal PTC/APTC cost. It should also include expected federal PTC/APTC savings under the waiver and expected federal savings net of any reduction in Exchange User Fee revenues.]*

**Table 1**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Scenario | 1 | 2 – Best Estimate | 3 | 4 | 5 | 6 |
| **Enrollment** | **Constant** | **Reactive** | **High** | **Constant** | **Reactive** | **High** |
| **Premiums** | **Rate Filings** | **Rate Filings** | **Rate Filings** | **Low** | **Low** | **Low** |
| **Baseline** |  |  |  |  |  |  |
| Total Non-Group Enrollment | 207,060 | 200,793 | 212,997 | 207,060 | 200,793 | 212,997 |
| Exchange Enrollment | 126,881 | 125,032 | 132,818 | 126,881 | 125,032 | 132,818 |
| APTC Enrollment | 93,322 | 93,322 | 100,539 | 93,322 | 93,322 | 100,539 |
| Total Non-Group Premium PMPM | $507.57 | $507.57 | $507.57 | $483.40 | $483.40 | $483.40 |
| Exchange Premium PMPM | $537.87 | $537.87 | $537.87 | $512.26 | $512.26 | $512.26 |
| APTC PMPM | $424.68 | $424.68 | $424.68 | $404.46 | $404.46 | $404.46 |
| Total Non-Group Premiums | $1,261,165,673 | $1,222,995,400 | $1,297,329,549 | $1,201,110,165 | $1,164,757,524 | $1,235,551,951 |
| Total APTCs | $475,581,251 | $475,581,251 | $512,360,158 | $452,934,524 | $452,934,524 | $487,962,055 |
| **After Reinsurance** |  |  |  |  |  |  |
| Reinsurance Funding | $90,000,000 | $90,000,000 | $90,000,000 | $90,000,000 | $90,000,000 | $90,000,000 |
| Reduction in Premiums (Reinsurance Funding) | -7.1% | -7.4% | -6.9% | -7.5% | -7.7% | -7.3% |
| Reinsurance Assessment | 0.3% | 0.3% | 0.3% | 0.3% | 0.3% | 0.3% |
| Reduction in Premiums (Improved Morbidity) | -0.4% | -0.4% | -0.4% | -0.4% | -0.4% | -0.4% |
| Total Premium Impact | -7.2% | -7.5% | -7.0% | -7.6% | -7.9% | -7.4% |
| Total Non-Group Premium PMPM | $470.79 | $469.65 | $471.93 | $446.55 | $445.40 | $447.69 |
| Exchange Premium PMPM | $498.90 | $497.68 | $500.11 | $473.21 | $472.00 | $474.42 |
| APTC PMPM | $393.90 | $392.95 | $394.86 | $373.62 | $372.66 | $374.58 |
| Percent Change in Total Enrollment | 1.7% | 1.7% | 1.6% | 1.8% | 1.8% | 1.6% |
| Total Non-Group Enrollment | 210,513 | 204,162 | 216,300 | 210,702 | 204,346 | 216,480 |
| Exchange Enrollment | 127,900 | 126,026 | 133,766 | 127,955 | 126,080 | 133,818 |
| APTC Enrollment | 93,322 | 93,322 | 100,539 | 93,322 | 93,322 | 100,539 |
| Total Premiums | $1,189,286,565 | $1,150,603,237 | $1,224,941,794 | $1,129,059,223 | $1,092,196,949 | $1,162,988,100 |
| Total APTCs | $441,119,306 | $440,047,877 | $476,385,661 | $418,404,959 | $417,333,784 | $451,914,390 |
| **Savings** |  |  |  |  |  |  |
| Estimated APTC Savings | $34,461,945 | $35,533,373 | $35,974,498 | $34,529,566 | $35,600,740 | $36,047,665 |
| Estimated Net Federal Savings | $31,816,345 | $32,866,704 | $33,312,665 | $31,857,135 | $32,907,853 | $33,359,779 |

I. *[Insert state name]* 1332 Waiver Request

*[****Note to drafters****: This paragraph should be customized to reflect state-specific conditions.] [Insert state name]*’s individual health insurance market, like others across the country, has been through significant changes and challenges in the past few years. Despite the fact that [the number of Insurers participating has decreased], *[insert state name]*’s health insurance market [continues to be relatively competitive and stable]. [This is largely due to the state’s efforts to work collaboratively with *[insert state name]*’s health insurers to ensure a stable and adequately priced market with multiple plan options throughout the majority of the state.]

*[Insert state name]* seeks waiver of Section 1312(c)(1) under Section 1332 of the ACA for a five-year period beginning in the 2020 plan year to develop a state reinsurance program. The waiver is intended to further stabilize the individual market, reduce rates, and to encourage insurance companies to offer plans in more parts of the state.

Section 1312(c)(1) requires “all enrollees in all health plans . . . offered by [an] issuer in the individual market . . . to be members of a single risk pool.” This application calls for waiving the single risk pool requirement to the extent it would otherwise require excluding expected state reinsurance payments when establishing the market-wide index rate. A lower index rate will result in lower premiums for *[insert state name]*’s second lowest-cost silver plan, resulting in a reduction in the overall APTC that the federal government is obligated to pay for subsidy-eligible consumers in *[insert state name]*. The waiver does not require changes to any other ACA provision.

Without a reinsurance program, individual health insurance premiums will continue to rise at an unsustainable rate. Consequently, more *[insert state name]* residentswill choose or be forced to go without health insurance, further driving up rates due to adverse selection and provider cost shifting. By implementing a reinsurance program, *[insert state name]* will reduce the potential for further market disruption, lower the cost of individual premiums, and decrease federal subsidy obligations.

By mitigating high-cost individual health insurance claims, the reinsurance program will help to stabilize *[insert state name]*’s individual market and make premiums more affordable. Table 1 above shows that, with the waiver and reinsurance program in place, individual market premiums, including premiums for the second lowest cost silver plan, are expected to be *[insert figure]* percent lower in [2020] than they would be absent the waiver*.*

This premium reduction will reduce federal APTC and PTC cost. Table 1 shows that absent the waiver, [2020] federal APTC and PTC spending in *[insert state name]* will be an estimated *[insert figure]*. After factoring in the waiver, total [2020] federal APTC and PTC spending is estimated to be *[insert figure]* – a savings of *[insert figure]*. Similar savings are estimated for each year of the 10-year budget window.

To establish the state’s reinsurance program, *[insert state name]* seeks federal pass-through funds in the amount the federal savings for APTC and PTC, subject to the cap imposed by the statutory deficit neutrality requirement. Table 1 shows that, taking into account the waiver’s impact on federal revenues from *[the federal Exchange user fee]*, *[insert state name]* requests pass-through funding of *[insert figure]* in [2020]. *[****Note to drafters****: The federal Exchange user fee applies only to states using the federal Marketplace platform.]*

II. Compliance with Section 1332 Guardrails

## A. Scope of Coverage Requirement (1332(b)(1)(C)):

As previously noted, the waiver will reduce the cost of coverage in the individual market. The lower cost of coverage will allow more *[insert state name]* residents to purchase or maintain coverage in the individual market than without the waiver. As indicated in Table 1, enrollment in the individual market is expected to increase by approximately *[insert figure]* in [2020], with similar increases in later years. The waiver will have no material impact on the availability of other types of coverage, such as Medicaid, CHIP, and employer-based insurance, so no impact is expected on the number of individuals with those types of coverage. The waiver will have a positive impact on vulnerable populations who buy coverage in the individual market since premiums will be lower.

## B. Affordability Requirement (1332(b)(1)(B)):

As noted above, the reinsurance program will, in each year it is in effect, make the cost of individual coverage lower than it would be absent the waiver. The waiver will not affect the premiums or cost-sharing for coverage obtained through other means, such as Medicaid, CHIP, and employer-based coverage. *[****Note to drafters****: The next sentence should be customized to reflect the impact of any assessment on health coverage that is imposed as part of the waiver.]* [Although employer health plans will be subject to *[insert short description of the assessment]* to fund the waiver, employer contributions and employee wages are not expected to be affected by the waiver.] The waiver will have a positive impact on vulnerable populations who buy coverage in the individual market since premiums will be lower.

## C. Comprehensiveness Requirement (1332(b)(1)(A)):

The waiver will have no material effect on the comprehensiveness of coverage for *[insert state name]* residents. Regardless of whether the waiver is granted, all *[insert state name]* ACA-compliant plans will be required to provide coverage of essential health benefits. Similarly, the scope of benefits provided by other types of coverage such as Medicaid, CHIP, and grandfathered plans will not be impacted. The waiveris expected to increase the number of individuals with health coverage. Individuals gaining health coverage under the waiver will have coverage for more comprehensive health benefits than they would absent the waiver.

## D. Deficit Neutrality Requirement (1332(b)(1)(D)):

As stated above, *[insert state name]* anticipates that individual premiums, including premiums for the second-lowest-cost silver plan, will be lower under the waiver by *[insert figure]* percent in [2020], *[insert figure]* percent in [2021], and similar amounts in 2022 through 2028. Because federal APTC and PTC cost are tied to the second-lowest-cost silver plan, these lower premiums will result in lower federal spending net of revenues in each year of the waiver. [Lower premiums in the individual market will also result in a small reduction in revenues from the federal Exchange user fee in each year of the waiver.] *[****Note to drafters****: The federal Exchange user fee applies only to states using the federal Marketplace platform. For other states, this last sentence should be omitted.]*  Combining these factors, the waiver will produce net federal savings of about *[insert figure]* in 2020 and similar amounts in later years. *[Insert state name]* requests pass-through funds in each year equal to the expected APTC/PTC savings, and not to exceed net expected savings under the waiver. As shown in Table 2 for selected time periods and in *[insert reference to the actuarial and economic analysis]* for each year, granting pass-through funding in these amounts will not result in the waiver increasing the federal deficit in any year, over the 5 years of the waiver, or over a 10-year budget window.

*[****Note to drafters****: Table 2 should be filled in using data from the actuarial and economic analysis. The line regarding the Exchange User Fee should be omitted in states that do not rely on the federal platform.]*

**Table 2**

|  |  |  |  |
| --- | --- | --- | --- |
| **Impact to Federal Deficit Savings/Costs, Selected Time Periods** | | | |
| **Category of Impact** | **2019** | **2019-2023** | **2019-2028** |
| Savings in APTC and PTC | *[insert figure]* | *[insert figure]* | *[insert figure]* |
| Impact on Exchange User Fee Revenues | *[insert figure]* | *[insert figure]* | *[insert figure]* |
| Impact on PCORI Fee Revenues | *[insert figure]* | *[insert figure]* | *[insert figure]* |
| Requested Pass-through funds | *[insert figure]* | *[insert figure]* | *[insert figure]* |
| **Total Impact on Federal Deficit** | *[insert figure]* | *[insert figure]* | *[insert figure]* |

*[Note to drafters: States may also wish to include here or above a table showing the coverage impact broken down by income level.* [*Oregon’s application*](http://healthcare.oregon.gov/DocResources/1332-application.pdf) *includes such a table only in the actuarial analysis (see Table 9 on pg. A-6 of the Wakely analysis).]*

III. Description of the *[Insert state name]* 1332 Waiver Proposal

A. Authorizing Legislation

*[Insert reference to authorizing legislation]*,[[1]](#footnote-1) which establishes the reinsurance program and gives *[insert name of responsible agency]* the authority to implement a 1332 waiver, was signed into law by *[insert state name]* Gov. *[insert name]* on *[insert date]*. The goal of *[insert reference to authorizing legislation]* is to stabilize premiums for health insurance in the non-group market and provide greater financial certainty to health insurers and health insurance consumers.

*[****Note to drafters****: This paragraph should be customized to reflect the state’s specific plan. The language here is based on an attachment-point model of reinsurance. As noted above, there are also* [*conditions-based models*](http://familiesusa.org/product/alaska-reinsurance-1332-waiver-approach-can-work)*, like the one created under* [*Alaska’s reinsurance waiver*](https://www.commerce.alaska.gov/web/Portals/11/Pub/Headlines/Alaska%201332%20State%20Innovation%20Waiver%20June%2015%202017.pdf?ver=2017-06-26-091456-033)*.]* *[Insert reference to authorizing legislation]* requires *[insert name of responsible agency]* to [establish reinsurance program requirements, including the reinsurance program attachment point, coinsurance rate, reinsurance cap, and payment processes, by administrative rule.] The bill also gives *[insert name of responsible agency]* the authority to apply for a federal waiver to carry out the reinsurance program.

*[****Note to drafters****: This paragraph also reflects an individual-attachment-point reinsurance program and would need to be modified for a different type of reinsurance program, such as a conditions-based program. This paragraph should also note if the reinsurance program requires or incentivizes issuers or others to manage health care cost and utilization for individuals whose risk if covered by the reinsurance program, or takes other measures that advance the principle of controlling health care spending.]* The reinsurance program will reimburse individual health insurers for [a proportion (coinsurance amount) of high-cost enrollee claims between a lower bound (attachment point) and an upper bound (cap). For [2019], *[Insert state name]* is likely to set the reinsurance cap at *[insert figure]*, the coinsurance rate at *[insert figure]*, and the attachment point at an amount so that total estimated reinsurance payments match the funding available. If 2020 experience is worse than expected and the funding is not sufficient, *[insert state name]* will reduce the coinsurance rate and decrease reinsurance payments. If the 2020 experience is better than expected, *[insert state name]* will retain the funds in reserve for future payouts.]

*[Insert reference to authorizing legislation] also* creates *[insert description of any funding source created by the authorizing legislation, for example a coverage assessment. If this funding source is contingent on waiver approval, indicate that as well.]*. *[****Note to drafters****: As noted above, the operation of the reinsurance program must be contingent on waiver approval. Other aspects, such as the funding mechanism and the underlying structure of the reinsurance program, may be either contingent on waiver approval or included in the baseline statute, and there are reasons the latter approach may be beneficial.]*

*[Insert description of any other funding sources that will be used to cover the state share of the cost of reinsurance program, such as general funds or a pre-existing health care fund.]*

## B. Federal Pass-Through Funding

The waiver is designed to improve *[insert state name]* residents’ access to affordable and comprehensive coverage. The goals of the reinsurance program are to spread the risk of high-cost claimants across the broader health insurance market, thereby lowering premiums for the individual market. In doing so, the reinsurance program will incentivize individual enrollees to join or remain in the market, encourage insurer participation, and reduce overall instability.

Because the amount of APTC available for eligible consumers is tied to the second-lowest-cost silver plan available through the *[insert state name]* Marketplace, the waiver will reduce net federal expenditures due to APTC and PTC. Through this waiver request, *[insert state name]* seeks the amount of these federal savings, net of other costs that result from the waiver. *[Insert state name]* will use these funds to help pay for the reinsurance program.

IV. Draft Waiver Implementation Timeline

*[****Note to drafters****: This paragraph should be customized to reflect the state’s particular implementation plan.] [[Insert name of responsible agency]* will be responsible for implementing the reinsurance program. *[Insert name of responsible agency]* will promulgate the program’s operating processes, requirements, payment parameters, and procedures through administrative rules. *[Insert name of responsible agency]* will collect program funds from assessments on insurers, collect and analyze reinsurance claims, and distribute reinsurance payments to eligible insurers. *[Insert state name]* has a number of initiatives designed to incentivize providers, payers, and enrollees to contain and manage health care costs and utilization for high-claims-cost individuals. The reinsurance program is not anticipated to include additional incentives.]

*[****Note to drafters****. Federal regulations implementing section 1332 require the application to include an implementation timeline. The timeline shown in gray below is adapted from the one included in the Oregon application and shown as a sample. The state should develop a timeline reflecting its particular implementation plan.]*

07/05/19: Legislation authorizing the waiver application is signed into law.

07/25/19: The public comment period begins.

08/24/19: The first public hearing is held.

08/25/19: The second public hearing is held.

08/25/19: Separate tribal consultation occurs.

08/26/19: The public comment period ends

08/31/19: The 1332 waiver application is submitted to the federal government.

09/08/19: The federal government determines that the waiver application is complete.

10/06/19: Relevant parts of HB 2391 become operational and bill becomes effective.

10/09/19: DCBS staffs the reinsurance program.

11/30/19: OHIM’s excess funds are transferred to the reinsurance program.

11/30/19: OMIP’s fund balance is transferred to the reinsurance program.

01/01/20: The federal government grants 1332 waiver and funds the reinsurance program for 2019.

05/15/20: Insurers pay first quarterly assessment (2019) to fund the waiver.

06/01/20: Administrative rules for the reinsurance program are issued.

06/22/20: DCBS holds six-month public forum required by 45 CFR 155.1320(c).

08/15/20: Insurers pay second quarterly assessment (2019) to fund the reinsurance program.

12/15/20: Insurers pay third quarterly assessment (2019) to fund the reinsurance program

01/01/21: The federal government funds the reinsurance program for 2020.

02/01/21: Insurers submit fourth quarter 2019 claims to the reinsurance program.

03/15/21: Insurers pay fourth quarterly (2019) assessment to fund the reinsurance program.

04/01/21: DCBS submits first annual report to the Federal government.

04/30/21: DCBS submits its first quarterly report to the federal government.

05/15/21: Insurers pay first quarterly assessment (2020) to fund the reinsurance program.

06/21/21: DCBS holds annual public forum required by 45 CFR 155.1320(c).

07/31/21: DCBS submits its second quarterly report to the federal government.

08/15/21: Insurers pay second quarterly assessment (2020) to fund the reinsurance program.

10/01/21: Insurers submit 2019 claims to the reinsurance program.

10/31/21: DCBS submits its third quarterly report to the federal government.

12/15/21: Insurers pay third quarterly assessment (2020) to fund the reinsurance program.

12/31/21: The reinsurance program reimburses insurers for 2019 eligible claims.

V. Additional Information and Reporting

A. Administrative Burden

Waiver of Section 1312(c) will cause minimal administrative burden and expense for *[insert state name]* and for the federal government. The waiver will cause no additional administrative burden to employers and individual consumers because Section 1312(c) does not relate to the administrative functions or requirements typically undertaken by employers or individuals. Individual health insurers will experience some administrative burden and associated expense as a result of the reinsurance program; however, the monetary benefit to insurers from the program will far exceed any resulting administrative expense.

*[Insert state name]* has the resources and staff necessary to absorb the following administrative tasks that the waiver will require the state to perform:

* Administer the reinsurance program
* Distribute federal pass-through funds
* Monitor compliance with federal law
* Collect and analyze data related to the waiver
* Perform reviews of the implementation of the waiver
* Hold annual public forums to solicit comments on the progress of the waiver
* Submit annual reports (and quarterly reports if ultimately required) to the federal government

The waiver will require the federal government to perform the following administrative tasks:

* Review documented complaints, if any, related to the waiver.
* Review state reports.
* Periodically evaluate the state’s 1332 waiver program.
* Calculate and facilitate the transfer of pass-through funds to the state.

*[Insert state name]* believes that the above administrative tasks are similar to other administrative functions currently performed by the federal government, so that their impact is minimal. Waiver of Section 1312(c)(1) does not necessitate any changes to the Federally-Facilitated Marketplace or to IRS operations and will not impact how APTC and PTC payments are calculated or paid.

B. Impact on Residents Who Need to Obtain Health Care Services Out-of-State

Because *[insert state name]* shares borders with *[insert names of states bordering the state]*, insurer service areas and networks that cover border counties generally contain providers in those states, especially in areas where the closest large hospital system is located in the border state. Granting this waiver request will not impact insurer networks or service areas that provide coverage for services performed by out-of-state providers.

# **C.** Ensuring Compliance, Waste, Fraud and Abuse

*[Insert name of responsible agency]* is responsible for regulating and ensuring regulatory compliance and monitoring the solvency of all issuers; performing market conduct analysis, examinations, and investigations; and providing consumer outreach and protection. *[Insert name of responsible agency]* investigates all complaints that fall within the agency’s regulatory authority.

The State of *[insert state name]* and *[insert name of responsible agency]* prepare comprehensive financial accounting statements annually. Financial statements are audited annually, with the most recent audit completed for the fiscal year ending in 2016. *[Insert name of responsible agency]* will administer the reinsurance program in accordance with its existing accounting, auditing, and reporting procedures. Auditing and reporting obligations of participating insurers will be established by rule.

*[Insert name of responsible agency]* is audited annually by the *[insert name of agency that audits responsible agency, if any]*. The reinsurance program will also be subject to audit by the *[insert name of agency that will audit reinsurance program, if any]*. The federal government is responsible for calculating the savings resulting from this waiver and for ensuring that this waiver does not increase federal spending.

D. State Reporting Requirements and Targets

*[Insert name of responsible agency]* will assume responsibility for the reporting requirements of 45 CFR 155.1324, including the following:

* Quarterly reports (45 CFR 155.1324(a)): To the extent required, *[insert name of responsible agency]* will submit quarterly reports, including reports of ongoing operational challenges, if any, and plans for, and results of, associated corrective actions.
* Annual reports (45 CFR 155.1324(b)): *[Insert name of responsible agency]* will submit annual reports documenting the following:

1. The progress of the waiver.
2. Data, similar to that contained in Attachment 1, on compliance with Section 1332(b)(1)(B) through (D) of the ACA.
3. Modifications, if any, to the essential health benefits for compliance with Section 1332(b)(1)(A) of the ACA.
4. The premium for the second lowest-cost silver plan under the waiver and an estimate of the premium as it would have been without the waiver for a representative consumer in each rating area.
5. A summary of the annual post-award public forum required by 45 CFR 155.1320(c) together with a summary of action taken in response to public input.
6. Any additional information required by the terms of the waiver.

To the extent that quarterly reporting is required under 45 CFR 155.1324(a), *[insert name of responsible agency]* recommends that such reporting commence no sooner than April 30, [2020], in order to provide some experience with the program about which to report. *[Insert name of responsible agency]* will submit and publish annual reports by the deadlines established in 45 CFR 155.1324(c) or the deadlines established by the terms of the waiver.

VI. Supporting Information and Miscellaneous

## A. 45 CFR 155.1308(f)(4)(i) – (iii)

The supporting information required by 45 CFR 155.1208(4)(i) – (iii), including the actuarial analyses and certifications, the economic analyses, the detailed deficit neutral 10-year budget plan, and the data and assumptions demonstrating that the proposed waiver is in compliance with 1332(b)(1)(A) – (B) are found in Attachment 1.

VII. Public Comment and Tribal Consultation

## A. Public Comment

*[****Note to drafters****: Federal regulations implementing section 1332 require a public notice and comment period, including public hearings, and require the waiver application to explain how these requirements have been met. The following detail was provided with the Oregon application and has been provided here as a sample.]*

On July 25, 2017, DCBS opened public comment on this waiver request and posted notice of the opportunity to comment on the Marketplace’s website (<http://healthcare.oregon.gov/Pages/reports-audits.aspx>). On the same date, DCBS sent notice via email to its list of interested parties and stakeholders. See Attachment 3. The list is comprised of over 440 individuals and organizations with an expressed interest in insurance-related matters.

On August 24, 2017, DCBS held a public hearing in conference room 260 in the Labor and Industries Building at 350 Winter Street NE in Salem, Oregon. At the public hearing, one member of the public testified. This testimony was also submitted in writing. See Attachment 4.

On August 25, 2017, DCBS held an additional public hearing from 10:00 AM to 12:00 PM in the Pine room of the Lincoln Building at 421 SW Oak Street in Portland, Oregon. Members of the public neither attended nor testified at this hearing.

DCBS received three written public comments on this waiver request. See Attachments 4 through 6. The public comment period closed on August 27, 2017 at 5:00 PM.

## B. Tribal Consultation

*[****Note to drafters****: Federal regulations implementing section 1332 require a State with*

*one or more Federally-recognized Indian tribes within its borders to carry out a separate process for meaningful consultation with such tribes, and require the waiver application to explain how this requirement has been met. The following detail was provided with the Oregon application and has been provided here as a sample.]*

On August 7, 2017, DCBS sent notice of the opportunity for tribal consultation via email to representatives of all federally-recognized tribes in Oregon. Oregon’s draft application and tribal consultation letter were included as attachments to the email. See Attachment 7, which includes the email and the tribal consultation letter. (Because the draft application is 82 pages, it was not included as part of Attachment 7.)

On August 23, 2017, at the Tribal Health and Human Services Cluster meeting, representatives of the tribes were reminded of the opportunity for tribal consultation. This meeting is held quarterly and is typically attended by representatives of all federally-recognized tribes in *[Insert state name]*.

On August 25, 2017, DCBS held tribal consultation from 1:00 PM to 3:00 PM in the Pine room of the Lincoln Building at 421 SW Oak Street in Portland, Oregon. DCBS provided the opportunity for consultation in person and via telephone. Federally-recognized tribes did not participate in the tribal consultation.

VIII. Alignment with Section 1332 Principles

*[Insert state name]*’s waiver, if approved, will advance several of the principles described in the October 2018 1332 guidance:

* **Provide increased access to affordable private market coverage**. The reinsurance program will reduce premiums exclusively for those purchasing private health insurance. Specifically, it will reduce premiums for private health insurance in the individual market by approximately [insert figure] percent for each of the five years the waiver is in effect. The reinsurance program will also support competition in the health insurance market, helping to ensure access to private insurance coverage.
* [**Encourage sustainable spending growth.**] *[****Note to drafters****: This bullet should be included if your waiver proposal includes elements designed to encourage sustainable spending growth. In addition, to the extent your state’s health care system includes measures independent of the waiver encourage sustainable spending growth, it may be helpful to highlight here that the waiver will support those measures by supporting your health care system generally.]*
* **Support and empower those in need**. By reducing premiums in the individual market, the waiver will target its impact at those who are not currently eligible for financial assistance and therefore generally face the largest premiums for health insurance. Individuals with incomes under 400 percent of the federal poverty (and who are not eligible for other coverage) are generally eligible for the PTC, which generally limits their contribution towards individual market health insurance to a fixed percentage of their income. As a result, they are generally insulated from the impact of premium changes. But individuals with incomes over 400 percent of the poverty line are ineligible for the PTC and therefore face the premium, which may be [over ten thousand dollars for a single individual].
* **Foster state innovation**. The waiver is a state-run approach to making coverage more affordable that is suited to the specific needs of [state name]. States across the country have pursued innovative approaches to strengthening their health care systems. A reinsurance waiver has been identified by [state name] as the approach that meets its needs while allowing it to take control of its own health care system.

**ADDITIONAL DOCUMENTS TO INCLUDE IN APPLICATION**

***Note to drafters****: In addition to the narrative above, the following elements either must or should be included in a state innovation waiver application. Samples of each element may be found in the Oregon application, available at* [*http://healthcare.oregon.gov/DocResources/1332-application.pdf*](http://healthcare.oregon.gov/DocResources/1332-application.pdf)*. The numbers in parentheses correspond to the page numbers on the top right of each page in the Oregon application packet.*

* *Actuarial and economic analysis (pg. 16-61)*
* *State legislation authorizing the application (pg. 62-84)*
* *Documentation of public notice and comment period and public hearings (pg. 85-86)*
* *Documentation of consultation with Indian tribes located in the state (pg. 96-99)*
* *Written comments received during the state notice and comment period (pg. 87-95)*

*States should also create a state webpage where all materials related to waiver are posted, and include that link in the application. For a sample, see Oregon’s page at http://healthcare.oregon.gov/marketplace/gov/Pages/applications.aspx*

1. A copy of *[insert reference to authorizing legislation]* is included with this waiver application and is marked as Attachment 2. [↑](#footnote-ref-1)