



STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
OREGON HEALTH INSURANCE MARKETPLACE

Date: March 31, 2017

To: The Department of Consumer and Business Services Marketplace
Advisory Committee

From: Anthony A. Behrens
Carrier Liaison

Re: 1332 Waiver Update

On March 13, 2017, the United States Department of Health and Human Services (HHS) published a letter from Secretary Price to the governors of the 50 states. The letter "invite[s] states to pursue approval of waiver proposals that include high-risk pool/state-operated reinsurance programs" similar to Alaska's proposal.

Additionally, the letter reiterated the requirements for requesting a 1332 waiver.

A 1332 waiver application must be submitted to the HHS and the Department of the Treasury. Before submitting an application, the state must pass legislation granting authority to implement the waiver and solicit public comment on the application by conducting public hearings. States with federally recognized tribes must consult with the tribes through a separate process to ensure meaningful consultation.

The 1332 waiver application must include all of the following:

- Justification for the provisions the state wishes to waive;
- Data to show the proposed waiver will not decrease coverage or affordability;
- A 10-year budget showing the waiver will not increase the federal deficit;
- Proof of the state's legal authority to implement the waiver; and
- An implementation plan and timeline.

After an application is submitted, HHS and the Department of the Treasury will conduct an initial review within 45 days to determine if the application is complete. After the application is deemed complete, a public notice and comment period must occur. HHS will accept or reject the application no later than 180 days after the application is deemed complete.

The application and decision process is estimated to take between 12 to 24 months. Secretary Price's letter did not indicate that the Trump administration intended to ease the 1332 waiver requirements. To the contrary, the letter reiterated these requirements. However, the letter did state that HHS would provide a checklist in the coming weeks to assist states with 1332 applications.

Given the following:

- (1) Significant uncertainty around the Affordable Care Act (ACA) and Congressional health care reform legislation still exists
- (2) The 1332 subcommittee recommendations did not include market stabilization strategies such as a high risk pool or reinsurance program; and
- (3) HHS has yet to release the checklist mentioned in Secretary Price's letter to governors,

the Oregon Health Insurance Marketplace (OHIM) recommends the following actions:

- Obtain the 1332 checklist;
- Schedule a meeting with HHS regarding the following:
 - The checklist;
 - Clarification of the extent to which HHS intends to ease the 1332 application requirements, if any; and
 - How Congressional health care reform legislation may affect Section 1332 of the ACA and applications submitted thereunder.
- Convene the subcommittee via email, telephone, or in person to discuss the information OHIM receives and determine next steps.