



Affordability Care Act and American Health Care Act

Summary of State Waivers Affecting Health Insurance Markets

AHCA State Waivers

Total Funding: The April 20, 2017 Amendment to H.R. 1628 inserts language permitting states to waive certain ACA requirements to encourage less costly health insurance premiums.

Waiver “Guardrails”: Waivers are automatically approved unless disapproved by HHS within 60 days for noncompliance with waiver statute. Waiver applications must:

1. **Coverage:** Waiver applications must describe how they would increase enrollment and increase health plan choice within the state
2. **Affordability:** The waiver must reduce average premiums and stabilize premiums for people with preexisting conditions and help stabilize the insurance market
3. **Timeline:** No waiver may extend over a period longer than ten years unless the state requests a continuation
4. **Prohibitions:** The statute prohibits gender underwriting and the exclusion of people with preexisting conditions.

What may be waived: States may apply for three different kinds of waivers:

- For plan years after January 1, 2018 states may set the age ratio higher than the 5:1 ratio created by the AHCA
- After January 1, 2020 States may specify their own set of essential health benefits for the individual and small group markets
- Beginning with plan year 2019 states may permit insurers to engage in health status underwriting under certain conditions:
 - States must provide financial assistance to help high-risk consumers access coverage in the individual market
 - States must provide incentives to appropriate entities to enter into arrangements with the state to help stabilize premiums
 - States must participate in the federal invisible risk sharing program (FIRSP)

What may not be waived: Waivers are not applicable toward:

- Section 1332 programs
- Basic Health Plans (BHP) or CO-OPs
- Interstate compacts or multi-state plans
- Insurance benefits provided to Congress

1332 Waivers

1332 Waivers: Section 1332 of the Affordable Care Act, retained in the AHCA, permits a state to apply for a State Innovation waiver to pursue new strategies to providing health insurance while retaining the basic protections of the ACA.

Waiver “Guardrails”: The ACA dictates that State Innovation waivers satisfy four criteria in relation to the ACA

1. **Coverage:** Coverage must be “at least as comprehensive”
2. **Affordability:** Coverage must be “at least as affordable” (inclusive of all ACA cost-sharing protections)
3. **Number:** Coverage must be provided to “a comparable number of residents”
4. **Budget:** Provisions included in the waiver may not increase the federal deficit

What may be waived: The ACA also specifies which types of provisions may be waived through a 1332. These include rules and legislation governing:

- Benefits
- Subsidies
- Health insurance marketplaces
- Qualified Health Plan certification
- The individual mandate
- The employer mandate