

SECTION 1332 “STATE INNOVATION” WAIVERS

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting. (5-4-105, MCA; [Chapter 309, Laws of 2017](#)) The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: The federal health care law passed in 2010 included a section that allowed states to apply for “state innovation waivers” that would allow them to opt out of certain aspects of the law, beginning in 2017. To receive a waiver, a state must set up an alternative method of providing its residents with high-quality, affordable health insurance. Known as Section 1332 waivers for the section of law that created them, the waivers allow states to opt out of the following requirements of the Patient Protection and Affordable Care Act (ACA):

- the essential health benefits ACA requires health plans to cover;
- limits on cost sharing for covered benefits;
- standards for health insurance marketplaces;
- coverage tiers known as “metal” tiers because they’re named after precious metals; and
- premium tax credits and cost-sharing reductions.

To obtain a waiver, a state must show that the alternative coverage it’s proposing:

- will be at least as comprehensive and affordable as plans offered through ACA and the health insurance exchanges;
- will cover at least as many state residents as would have been covered under ACA; and
- will not increase the federal deficit.

States also must provide an opportunity for the public to comment on any waiver application before the application is submitted to the federal government.

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The 2019 Legislature passed Senate Bill 125, authorizing the state to apply for a 1332 waiver to create a reinsurance pool. The Centers for Medicare and Medicaid Services (CMS) approved the waiver in August 2019. CMS notified the state in January 2020 that approximately \$22.5 million would be made available to the state in 2020 for the reinsurance effort.

Background Materials:

[42 U.S. Code § 18052-Waiver for State Innovation](#) (codified version of ACA Section 1332)

[Section 1332: State Innovation Waivers](#), CMS (provides links to fact sheets, FAQs, and detailed federal rules and guidance)

[Innovation Waivers: State Options and Legislation Related to the ACA Health Law](#), NCSL, Aug. 22, 2018

[Tracking Section 1332 State Innovation Waivers](#), Kaiser Family Foundation, Aug. 23, 2018

[1332 State Innovation Waivers for State-Based Reinsurance](#), State Health Access Data Assistance Center

MONTANA'S 2019 WAIVER APPLICATION

[Summary of Waiver Application](#), Aug. 16, 2019

[Waiver Approval and Specific Terms and Conditions](#), Aug. 16, 2019

Introduced Legislation

2019

[Senate Bill No. 125](#) (Chapter Number Assigned) -- AN ACT ESTABLISHING THE MONTANA REINSURANCE ASSOCIATION AND PROGRAM; REQUIRING MANDATORY MEMBERSHIP OF HEALTH AND DISABILITY INSURERS; PROVIDING FOR A BOARD OF DIRECTORS; ESTABLISHING DUTIES OF THE INSURANCE COMMISSIONER; PROVIDING DUTIES AND POWERS OF THE BOARD AND ADMINISTRATOR; ESTABLISHING ASSOCIATION MEMBER ASSESSMENTS; ESTABLISHING REINSURANCE PAYMENTS TO ELIGIBLE HEALTH INSURERS; PROVIDING FOR DATA CONFIDENTIALITY; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR A SPECIAL REVENUE ACCOUNT; PROVIDING FOR CONTINGENT VOIDNESS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

2017 Special Session

[House Bill No. 5](#) (Vetoed by Governor) -- AN ACT AUTHORIZING THE STATE INSURANCE COMMISSIONER TO APPLY FOR STATE INNOVATION WAIVERS; ESTABLISHING PUBLIC NOTICE AND HEARING REQUIREMENTS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

2017 Regular Session

[House Bill No. 652](#) (Vetoed by Governor) -- AN ACT GENERALLY REVISING HEALTH CARE AND INSURANCE COVERAGE LAWS; AUTHORIZING APPLICATION FOR STATE INNOVATION WAIVERS; AUTHORIZING DEVELOPMENT OF PROGRAMS TO ENSURE AFFORDABLE CARE AND COVERAGE FOR HIGH-RISK INDIVIDUALS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

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March 26, 2020