

Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Andy Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Hubert Humphrey Building, Room 337H
Washington, DC 20201

Secretary Burwell and Acting Administrator Slavitt:

As you know, the ability to apply for waivers under Sec. 1332 was included in the Patient Protection and Affordable Care Act to encourage states to develop innovative methods to deliver health care. As detailed in the ACA, starting with the 2017 plan year states can receive waivers for:

- Part I of subtitle D of Title I of the ACA, related to the establishment of qualified health plans;
- Part II of subtitle D of Title I of the ACA, related to insurance competition through health benefit exchanges;
- Section 1402 of the ACA, related to reduced cost sharing for individuals enrolling in qualified health plans;
- Section 36B of the Internal Revenue Code, related to refundable health credits;
- Section 4980H of the Internal Revenue Code, related to shared responsibility for employers; and
- Section 5000A of the Internal Revenue Code, related to the individual mandate.

Each of our respective states is considering the necessary steps to apply for a Sec. 1332 waiver from your agency. Per regulations, state applications can undergo at least 225 days of review by your department, meaning they must submit a waiver application as soon as December of this year in order to be prepared for a 2017 plan start date.

We ask you provide clear guidelines and thresholds so that our states can credibly meet the requirements to receive a Sec. 1332 waiver. Your regulatory guidance for Sec. 1332 waivers released on February 27, 2012 require any state plans to:

1. Provide coverage “at least as comprehensive” as under the ACA;
2. Provide coverage “at least as affordable” as under the ACA;
3. Provide coverage to “a comparable number of residents” as would be covered under the ACA; and

4. Not lead to an increase in the federal deficit.

In order to facilitate a robust, yet rapid, waiver application process, could you provide quantifiable criteria for our states to meet in order to be in compliance with the quoted conditions in items 1-3 listed above? Further, please elaborate on how the criteria for “a comparable number of residents” would be impacted by states seeking waivers for multiple programs (e.g. joint Sec. 1332 and Sec. 1115 waivers).

Please provide a response on or before September 1, 2015 so that our respective governors and state legislatures have adequate time to incorporate your clarifications into their waiver applications.

Sincerely,

Tom Cotton
U.S. Senator

Al Franken
U.S. Senator

John Boozman
U.S. Senator
