

IDAHO'S DRAFT APPLICATION PURSUANT TO SECTION 1332 OF THE PATIENT PROTECTION & AFFORDABLE CARE ACT, ENCOURAGING WAIVERS FOR STATE INNOVATION

EXECUTIVE SUMMARY

The State of Idaho, through the Idaho Department of Insurance (IDOI) and in conjunction with Idaho's state-run health insurance exchange, Your Health Idaho, submits this Section 1332 State Innovation Waiver request to the Centers for Medicare and Medicaid Services (CMS), a division of the United States Health and Human Services (HHS), and to the United States Department of the Treasury. The goals of the proposed Section 1332 Waiver are to:

1. Increase overall participation in Idaho's individual health insurance market.
2. Provide affordable coverage options to working Idaho households with incomes below 100% of the Federal Poverty Level (FPL) who are U.S. citizens not eligible for Medicaid, through the same mechanism that lawfully-present aliens currently obtain affordable coverage.
3. In conjunction with Idaho's proposed Section 1115 Medicaid Waiver and Idaho Individual High Risk Pool, stabilize and decrease the cost of insurance premiums in the individual health insurance market.

As background, the Patient Protection & Affordable Care Act (ACA) expanded affordability of health coverage in several ways. Individuals and families not eligible for Medicaid under previously established eligibility categories (age, disability, parental status, etc.) became newly eligible for Medicaid provided their income did not exceed 138% FPL. Those not eligible for Medicaid or affordable employer-sponsored health insurance could qualify for help paying their health insurance premiums via Advance Premium Tax Credits (APTC), provided their incomes were from 100% to 400% FPL. Individuals and households with incomes between 100 and 250% FPL became eligible for help in paying out-of-pocket costs such as deductibles, coinsurance or copayments through cost-sharing reductions (CSRs). Lawfully-present aliens with income under 100% FPL who were ineligible for Medicaid became eligible for APTC and CSRs as if their household income were 100% FPL.

At the time of the ACA's passage, it was assumed that all U.S. citizens and lawfully-present aliens with incomes under 400% FPL and not eligible for an employer-sponsored health plan would potentially qualify for financial assistance in obtaining affordable coverage, either through public programs, i.e., Medicaid, the Children's Health Insurance Program (CHIP) or Medicare, or through an individual health plan in the commercial insurance market. However, in *National Federation of Independent Business v. Sebelius, Secretary of Health and Human Services, et al.*, 132 S.Ct. 2566

(2012), the U.S. Supreme Court, while upholding most provisions of the ACA, ruled that states could not be required to expand Medicaid to 138% FPL in order to receive funding for the existing Medicaid program. Therefore, 19 states, including Idaho, opted not to expand Medicaid.

Idaho estimates that 78,000 Idaho residents have incomes of under 100% FPL and are without health coverage. Due to the requirement to have income of at least 100% FPL in order to qualify for assistance in paying for monthly insurance premiums (APTC), these Idahoans are effectively locked out of the commercial health insurance market due to the unaffordability of coverage. While these working U.S. citizens are ineligible for APTC, lawfully-present aliens falling into the same income range are eligible for and receive APTC.

Idaho's Section 1332 Waiver will extend APTC and CSR eligibility to those working citizens who file federal income tax returns with income below 100% FPL. These individuals and families, expected to be around 22,000 lives, will qualify for APTC to the same extent as those with incomes of 100% FPL: APTC will offset premium in excess of 2% of countable income. These Idahoans will also qualify for CSRs when enrolled in a silver plan through the exchange, which will provide cost sharing at a 94% actuarial value.

This Section 1332 Waiver is but one component of Idaho's Dual Waiver approach. Idaho is also applying for a Section 1115 Medicaid Waiver. The proposed Section 1115 Waiver adds a new Medicaid eligibility category, called the Complex Medical Needs program, for individuals with certain chronic medical conditions whose countable income is from 0% to 400% FPL. Currently, some of these individuals with incomes of 100% to 400% FPL are enrolled in the individual insurance market and receiving APTC and CSR payments. Moving them to the Complex Medical Needs program will reduce the amount of APTC and CSRs paid by the federal government, which will instead pay the Federal Medical Assistance Percentage (FMAP) of 71.17% for 2018. Additionally, the premium rates for individual health insurance plans are anticipated to substantially decrease due to a number of these individuals with chronic and costly medical conditions no longer being a part of the individual risk pool.

Lastly, Idaho has recently implemented changes to the Idaho Individual High Risk Pool. Beginning January 2018, insurers will be able to cede for reinsurance those enrolled in individual major medical coverage who have been diagnosed with specific high-risk medical conditions. Idaho anticipates that ceding these high-risk individuals will also serve to lower federal APTC costs by reducing premiums in the individual market.

This combined approach, through Idaho's proposed Section 1115 Waiver and the Idaho Individual High Risk Pool, makes Idaho uniquely able through a Section 1332 Waiver application to extend premium and cost-sharing assistance to hardworking Idaho households with incomes below the federal poverty level, while meeting all the criteria for a Section 1332 Waiver approval.

ASSURANCES

Idaho's Section 1332 Waiver application proposes to waive a portion of 26 U.S. Code § 36B, dealing with eligibility for APTC. Section 36B(c)(1)(B) provides for eligibility for APTC to lawfully-present aliens with incomes under 100% FPL. This waiver would waive the requirement for individuals in this income bracket to be resident aliens, and would extend APTC eligibility to all those lawfully-present, tax-filing households in the United States with incomes from 0% to 100% FPL.

Comprehensiveness. Section 1332(b)(1)(A) of the ACA requires that any waivers provide coverage at least as comprehensive as that defined in section 1302(b) of the ACA. Comprehensiveness of coverage will be unchanged by the waiver, as Idaho does not propose to waive any of the requirements concerning the ten Essential Health Benefits, and the waiver will not result in individuals losing coverage or moving to less comprehensive coverage.

Affordability. As required under section 1332(b)(1)(B) of the ACA, the proposed waiver provides for coverage and cost-sharing protections at least as affordable as those provided under Title I of the ACA. The proposed waiver will greatly increase affordability for working U.S. citizens with incomes under 100% FPL who are currently ineligible for any financial assistance programs. Affordability for other populations, such as with incomes above 400% FPL or otherwise purchasing individual health insurance coverage outside of the exchange, will also improve as a result of the 1115 Medicaid Waiver and Idaho Individual High Risk Pool programs.

Scope of Coverage. Section 1332(b)(1)(C) of the ACA requires that any Section 1332 Waiver must provide coverage to at least a comparable number of state residents as is provided under Title I of the ACA. Idaho's proposed waiver will not decrease the number of Idahoans with health coverage. Because the waiver will make premium and cost-sharing assistance available to a greater number of very low-income Idahoans, the scope of coverage will increase.

Deficit Neutrality. Section 1332(b)(1)(D) requires that waivers be deficit neutral. Idaho's proposed waiver will not result in increased federal spending. The waiver is expected to result in a savings of federal money as compared to an expansion of Medicaid to individuals and families with incomes of 138% FPL and below. When combined with the proposed Section 1115 Medicaid Waiver, Idaho's Section 1332 Waiver will result in an overall savings to the federal government in the amount of APTC paid to eligible households above 138% FPL.

The IDOI is currently working toward including the ten-year actuarial projection demonstrating deficit neutrality, which is needed for approval of Idaho's Section 1332 Waiver. The actuarial certifications will be part of the final application submitted to CMS in early January 2018.

DESCRIPTION OF IDAHO'S SECTION 1332 WAIVER PROGRAM

Section 1332 of the ACA creates a new Waiver for State Innovation and authorizes the Secretaries to waive specific requirements, including Section 36B (relating to refundable credits for coverage under a qualified health plan) of the Internal Revenue Code. This waiver application is to waive a specific constraint found at 26 U.S. Code § 36B(c)(1)(B), removing the requirement that tax credits for those households under 100% FPL only be given to those with “alien status.”

The relevant citation, with the waived constraint stricken-through, is as follows:

26 U.S. Code § 36B(c)(1)(B)
(B) Special rule for certain individuals lawfully present in the United States If—
(i) a taxpayer has a household income which is not greater than 100 percent of an amount equal to the poverty line for a family of the size involved, and
(ii) the taxpayer is ~~an alien~~ lawfully present in the United States, but is not eligible for the medicaid program under title XIX of the Social Security Act ~~by reason of such alien status~~, the taxpayer shall, for purposes of the credit under this section, be treated as an applicable taxpayer with a household income which is equal to 100 percent of the poverty line for a family of the size involved.

By waiving the restriction that the special rule tax credit only be available to aliens, working U.S. citizens gain the same access to tax credits that was previously only available to lawfully-present aliens. These low-income (below 100% FPL) working households have no other access to affordable health insurance in states such as Idaho, which chose to not expand Medicaid.

The State of Idaho, through the Idaho Department of Health and Welfare (IDHW), is already fully responsible for determining all tax credit eligibility. There are currently thousands of lawfully-present aliens with household incomes below 100% FPL receiving APTC and CSRs. Upon waiver approval and modifying the IDHW eligibility rules, this additional population of citizens will have access to affordable health insurance at a total cost much less than if Idaho adopted the full Medicaid expansion option.

COVERAGE AND SPENDING UNDER STATUS QUO: 2019 ESTIMATES

Without the proposed Section 1332 Waiver, and without the optional ACA Medicaid expansion, an estimated 88,000 Idaho residents will receive APTC assistance and 56,000 Idahoans will receive CSRs in 2019. Average annual cost per APTC recipient is estimated at \$6,985; average CSR cost is \$0

due to the expectation of no federal CSR funding. Total 2019 federal expenditures are anticipated at \$615,000,000, as shown in Table 1 below.

Table 1

Status Quo Without Waivers – 100% to 400% FPL (Commercial Market)				
Individual Market 100%-400% FPL	Enrollees	Annual Cost per Enrollee	Aggregate Federal Expenditures	Aggregate State Expenditures
APTC	88,000	\$6,985	\$615,000,000	\$0
CSRs	56,000	\$0	\$0	\$0
Total			\$615,000,000	\$0

COVERAGE AND SPENDING UNDER MEDICAID EXPANSION SCENARIO: 2019 ESTIMATES

Idaho did not choose to expand Medicaid coverage to all those with incomes of 138% FPL and below. The following is an estimate of how Medicaid expansion would have affected coverage of Idahoans as well as state and federal spending.

Under this scenario, the number of individuals eligible for APTC and CSR assistance would decrease by an estimated 40,000, as those households with incomes from 100% to 138% FPL would no longer qualify for that form of assistance, being newly eligible for Medicaid. Another 79,000 Idahoans with incomes under 100% FPL would also gain eligibility through the Medicaid expansion.

Table 2 shows the breakdown of this hypothetical Medicaid expansion scenario with the associated costs and coverage for 2019.

Table 2

Medicaid Expansion and no Waivers				
Population	Enrollees	Annual Cost per Enrollee	Aggregate Federal Expenditures	Aggregate State Expenditures
Individual Market 139% - 400% FPL	67,000	\$6,392	\$428,000,000	\$0
Medicaid 100% - 138% FPL	40,000	\$4,127	\$149,000,000	\$17,000,000
Medicaid <100% FPL	79,000	\$4,127	\$293,000,000	\$33,000,000
Total Expenditures			\$870,000,000	\$50,000,000

COVERAGE AND SPENDING WITH SECTION 1332 AND SECTION 1115 MEDICAID WAIVERS AND IDAHO HIGH RISK POOL: 2019 ESTIMATES

Implementation of the Section 1332 and Section 1115 waivers plus the Idaho Individual High Risk Pool is projected to affect the Idaho individual health insurance market beginning in 2019. There are also impacts to Medicaid enrollment and costs, which are demonstrated in the Section 1115 waiver application and not part of this application. The Idaho Individual High Risk Pool provides reinsurance coverage to individual market health insurance plans, reducing the premium charged and APTC paid to individuals. The individual market federal and state expenditures in 2019 after waiver implementation are as follows.

INCOME 100% TO 400% FPL

Of the population already eligible for APTC (100% to 400% FPL) and CSRs (0% to 250% FPL), there would be an estimated reduction in eligibility and federal spending in the form of APTC due to a small number of these individuals becoming eligible for the High Risk Medicaid program due to a medical diagnosis. The number of estimated 2019 APTC recipients would drop to 87,000 from 88,000, while estimated CSR recipients would drop to 55,000 from 56,000. Estimated 2019 federal costs for APTC and CSRs would drop to \$473,000,000 from \$615,000,000.

INCOME UNDER 100% FPL

This population is currently ineligible for APTC (except lawfully-present aliens). With the Section 1332 Waiver, an estimated 22,000 Idahoans would apply for coverage and be found eligible for

APTC and CSR assistance. Combined federal costs for APTC and CSRs are estimated at \$140,000,000 for 2019.

Table 3 summarizes the projected enrollment and expenditures for 2019 with the Section 1332 Waiver plus the State’s individual market reinsurance costs through the Idaho Individual High Risk Pool.

Table 3

1332/1115 Waivers – Summary				
Population	Enrollees	Annual Cost per Enrollee	Aggregate Federal Expenditures	Aggregate State Expenditures
Individual Market 100%-400% FPL	87,000	\$5,434	\$473,000,000	\$0
Individual Market <100% FPL	22,000	\$6,370	\$140,000,000	\$0
Idaho Individual High Risk Pool			\$0	\$16,000,000
Total Expenditures			\$613,000,000	\$16,000,000

THREE HEALTH CARE REFORM SCENARIOS: A COMPARISON

Idaho’s challenge is to increase coverage options and affordability for working-age Idaho residents who are not offered employer-sponsored health coverage, while keeping state and federal spending under control. Solutions to this challenge must also be viable politically and philosophically within Idaho – emphasizing flexibility, accountability for able-bodied Idahoans in the form of cost-sharing, and controlling costs while not increasing entitlement programs.

Under the first scenario, Idaho continues with the status quo, without the Section 1332 or Section 1115 waivers. Idaho forgoes the opportunity to bring down the cost of health insurance in the individual market or to address the unequal treatment of low-income working citizens compared to lawfully-present aliens.

The second scenario is that of the ACA’s Medicaid expansion. This scenario would increase overall coverage. It would also move non-disabled, working-age Idahoans who currently have commercial health insurance to Medicaid. This scenario carries the highest federal costs.

The third scenario of the combined Section 1332 and Section 1115 waiver approach represents a market-based solution and an ideal middle ground. More Idahoans have access to affordable healthcare than with the status quo, with lower state and federal costs than expanding Medicaid.

Table 4 provides a summary comparison of the enrollment and cost of the three scenarios.

Table 4

Insured Lives			
Income Level	Status Quo	Medicaid Expansion	1332/1115 Waiver
<100% FPL	0	79,000	22,000
100% to 138% FPL	21,000	40,000	21,000
139% to 400% FPL	67,000	67,000	66,000
Total	88,000	186,000	109,000
Aggregate State and Federal Expenditures			
Income Level	Status Quo	Medicaid Expansion	1332/1115 Waiver
<100% FPL	\$0	\$326,000,000	\$146,000,000
100% to 138% FPL	\$187,000,000	\$166,000,000	\$139,000,000
139% to 400% FPL	\$428,000,000	\$428,000,000	\$344,000,000
Total	\$615,000,000	\$920,000,000	\$629,000,000
State	\$0	\$50,000,000	\$16,000,000
Federal	\$615,000,000	\$870,000,000	\$613,000,000
Annual State and Federal Expenditures Per Insured Life			
Income Level	Status Quo	Medicaid Expansion	1332/1115 Waiver
<100% FPL	\$0	\$4,000	\$6,700
100% to 138% FPL	\$8,900	\$4,000	\$6,700
139% to 400% FPL	\$6,400	\$6,400	\$5,200
Composite	\$7,000	\$5,000	\$5,800

DRAFT LEGISLATION

Legislation has been drafted for presentation to and approval by the 2018 Idaho State Legislature.

The proposed bill enables the Director of the IDOI to apply for a Section 1332 Waiver. Title 41, Chapter 52 of Idaho Code addresses the individual health insurance market. A new section, 41-5213, is created and, if approved by the legislature unchanged, will read as follows:

“41-5213. AUTHORITY TO APPLY FOR STATE INNOVATION WAIVER. The director may apply to the United States Secretary of Health and Human Services under 42 U.S.C. 18052 for a waiver of applicable provisions of P.L. 111-148 (Patient Protection and Affordable Care Act) with respect to health insurance coverage subject to the provisions of this chapter.”

The second part of the proposed legislation amends Idaho’s Title 56, Public Assistance and Welfare. Idaho Code § 56-254 delineates the classes of persons eligible for Medicaid in Idaho. The legislation will add a category of eligible Medicaid recipients:

“Effective as soon as federal approval for coverage can be obtained, persons with costly and complex medical conditions in accordance with department rule who

1. are under the age of sixty-five (65), and
2. have incomes less than the maximum allowable level for federally supported advance premium tax credits, and
3. who are not eligible for other coverage under this chapter, and do not have access to affordable employer sponsored coverage as defined in 26 CFR 1.36B.”

IMPACT IF WAIVER NOT GRANTED

If Idaho’s Section 1332 Waiver is not granted, working Idahoans with incomes below 100% FPL will continue to be without affordable healthcare options. There will continue to be preferred treatment of aliens over citizens regarding access to APTC and CSRs. Because Idaho has not opted to expand Medicaid, and given that premiums in the individual health insurance market have continued to rise over the past several years, coverage will only become more and more unaffordable for these low-income Idahoans.

CHARACTERISTICS OF IDAHO HEALTH INSURANCE MARKET

Per the United States Census Bureau, the overall Idaho population was estimated at 1,683,140 as of July 1, 2016. Of these Idahoans, 6.8% are under age 5; 19.2% are at least age 5 but under age 18; 58.9% are at least age 18 but under age 65; and 15.1% are age 65 and older. As of 2015, the Census Bureau estimated median household income was \$47,583, with 14.4% of Idahoans living below the federal poverty level.

Concerning the health insurance status of Idaho residents, the IDOI performs an annual survey of health insurance carriers to determine the number of Idahoans with commercial health insurance coverage, as well as the type of coverage (individual versus group, fully-insured versus self-funded, etc.). At the end of 2016, 124,589 Idaho residents were enrolled in individual coverage, including both on-exchange and off-exchange. Another 280,898 residents were enrolled in group coverage; of these, 75,985 were covered through small employers.

Self-funded employer plans covered 364,906 individuals as of the end of 2016.

Concerning coverage through public programs, per medicare.gov, CMS estimated that 183,997 Idahoans were enrolled in original Medicare and 79,687 were enrolled in Medicare Advantage plans in 2016. Per medicaid.gov, estimated Medicaid enrollment for Idahoans was 263,877 in 2016 (including children and adults), while enrollment in the Children’s Health Insurance Program (CHIP) was 35,964 for the same year. 2016 TRICARE enrollment for Idahoans was 52,245, and those enrolled in VA Care numbered 44,122.

For 2018 in Idaho, four on-exchange insurers will be offering a total of 121 individual and 139 small group plans.

Enrollment in on-exchange individual health insurance plans is estimated as shown in Table 5 for years 2015 and 2016 and projected through 2019 without the waivers.

Table 5

Average Monthly On-Exchange Individual Enrollment: 2015 through 2019					
Market Segment	2015	2016	2017	2018	2019
APTC	65,000	78,000	76,000	83,000	88,000
No APTC	16,000	11,000	10,000	12,000	12,000
Total Enrollment	81,000	89,000	86,000	95,000	100,000

Idaho’s average individual market premium cost is expected to continue increasing, driving up the average APTC, as provided in Table 6 below.

Table 6

Average On-Exchange Per Member Per Month Premium: 2015 through 2019					
APTC Eligible Population	2015	2016	2017	2018	2019
Gross Premium (PMPM)	\$300	\$352	\$448	\$618	\$680
APTC (PMPM)	\$225	\$264	\$354	\$522	\$582
Net Premium (PMPM)	\$75	\$88	\$94	\$96	\$98
Aggregate APTC	\$176M	\$247M	\$323M	\$520M	\$615M

ADMINISTRATIVE BURDEN

Idaho does not anticipate any significant increase in administrative burden as a result of the proposed waiver. The IDHW already has a system in place for the processing of applications from those seeking financial assistance for health coverage. When applications from individuals with incomes from 0% to 100% FPL are received, the IDHW already must verify income, determine

Medicaid eligibility, and otherwise process the application. With the waiver in place, this process would be the same except that applicants would receive a notice of eligibility for APTC rather than a denial for all assistance. Additionally, the IDHW is often already providing other benefits to a significant number of the Idahoans who would be eligible for APTC under this waiver, such as Medicaid for the children of these individuals, or the Supplemental Nutrition Assistance Program (SNAP).

Your Health Idaho (YHI), Idaho's exchange, would similarly be able to serve these newly-eligible APTC recipients without needing to add new resources. Multiple insurers offer individual health plans through the exchange, giving these potential new enrollees ample choice in selecting coverage. YHI has over 900 certified enrollment counselors, many of them licensed insurance agents, in place to assist consumers with plan selection at open and special enrollment periods. These resources would be well able to handle an increase in applicants seeking their guidance.

EFFECT ON ACA PROVISIONS NOT WAIVED

No other section of the ACA would be affected by the proposed waiver.

EFFECT ON IDAHOANS NEEDING TO OBTAIN SERVICES OUT OF STATE

Idaho's proposed Section 1332 Waiver will not reduce the ability of Idaho residents to receive health care services out of state. Idahoans who gain access to health insurance due to the waiver will newly be able to receive covered services out of state to the extent that their health plans provide.

WASTE, FRAUD AND ABUSE

Idaho does not expect any impact on waste, fraud and abuse as a result of the proposed waiver. Effective programs are already in place to prevent and detect waste, fraud and abuse.

- The IDHW currently has in place a robust verification system for Idahoans who apply for financial assistance to ensure that only qualified applicants are approved for assistance.
- YHI conducts initial and periodic verification of non-financial criteria; consumers are disenrolled for fraud or non-payment of premiums. YHI also monitors enrollment counselors to ensure interactions with the public are ethical. The YHI Board and its Finance Committee oversee YHI's financial integrity and work to ensure funds are spent wisely; an independent auditor performs annual financial and programmatic audits for the Committee's review.
- The IDOI currently guards against waste, fraud and abuse in multiple ways. The IDOI's Consumer Services Bureau serves to protect consumers from illegal or deceptive practices, investigates allegations of individuals filing fraudulent insurance claims, and receives and researches consumer complaints against insurers and others transacting insurance business. The IDOI's Company Activities Bureau monitors the financial condition of all

health insurers transacting business in Idaho, with particular emphasis including examination of those domiciled within the state, to assure company solvency. It also licenses and regulates insurance producers.

IMPLEMENTATION TIMELINE

The Idaho Section 1332 Waiver will be implemented through operational system changes at the IDHW. The IDHW processes all APTC applications already, and the required changes in that one system would cascade through the other relevant systems of YHI and carriers. No new state program or board would be needed. Beyond the legislation authorizing the waivers, the IDHW may have administrative rule changes that will need legislative approval.

Therefore, the proposed timeline for full implementation of the waiver is January 2019, as that is the first month citizens with income below 100% FPL will receive APTC and CSRs. The proposed timeline leading up to that full implementation is as follows, acknowledging that dates may change as the process continues:

November 1, 2017	Draft waiver application published on the state’s website and in the four newspapers with the widest circulation in the state, public comment period begins
November 8, 2017	Separate tribal consultation held
December 6, 2017	Abbreviated public notice posted in the state’s Administrative Bulletin
December 7, 2017	First public comment hearing is held in Boise, ID
December 8, 2017	Second public comment hearing is held in Pocatello, ID
December 12, 2017	Third public comment hearing is held in Coeur d’Alene, ID
December 15, 2017	Public comment period ends
January 5, 2018	Waiver application is submitted to CMS
January 2018	CMS determines waiver application is complete
April 2018	Enacting legislation for 1115 and 1332 waivers signed
May 2018	CMS grants 1332 waiver
July 2018	IDHW 1115 waiver begins
July 2018	IDHW eligibility system finalized for 2019 open enrollment period determinations
October 2018	IDHW begins determining APTC and CSR eligibility under waiver rules
January 2019	Health coverage and APTC payments begin for newly waiver-eligible enrollees
January 2020	YHI provides 1095 documents for the 2019 coverage year to waiver-eligible enrollees at the same time as all other enrollees