



# On The Path Toward Health for All:

Opportunities for States to Expand Access to Private  
Coverage through State Innovation Waivers ▶



# On The Path Toward Health for All: Opportunities for States to Expand Access to Private Coverage through State Innovation Waivers ▶

By **Gabrielle Lessard** | December 2023



This is part **four** of a series of policy briefs explaining different tools available to states to achieve Health for All – access to quality, affordable health coverage for all state residents, regardless of immigration status.

## Overview

Recent innovations at the state level demonstrate that leveraging the Affordable Care Act's (ACA) private insurance marketplace model can also be a tool for expanding access to coverage to uninsured immigrants excluded from the 2010 health reform law. Using the ACA's Section 1332 'State Innovation Waivers' in combination with state funds, advocates and policymakers can test alternative approaches to providing access to coverage. As of this writing, two states have received federal approval to launch this type of waiver program, leaving considerable opportunity for additional states to pursue similar waivers.

Just as the ACA envisioned an expansion of public health insurance coupled with a subsidized private insurance marketplace, Section 1332 waivers are best viewed as one tool in a toolkit, rather than a global solution. The cost of private market coverage is typically higher than that of public programs like Medicaid. In addition, Section 1332 waiver authority is limited to specific sections of the ACA and cannot be used to expand immigrant eligibility for marketplace subsidies for their undocumented residents. Looking at how states are using this authority, however, is a key to building a multi-layered approach to Health for All. Combined with the other policy solutions explored in this series to expand public health insurance options for immigrants, Section 1332 waivers can help states expand access to the private insurance marketplace.

## The Problem: The ACA's Exclusion of Undocumented Immigrants from the ACA's Private Health Insurance Marketplace

When the ACA became law in 2010, it sought to tackle the twin problems of access and affordability of health care. However, it excluded undocumented immigrants from purchasing either subsidized or full-cost plans on the health insurance marketplaces. The Obama administration also excluded Deferred Action for Childhood Arrivals (DACA) recipients through regulations promulgated in 2012. These exclusions exacerbated existing disparities between immigrants and the U.S.-born in access to coverage and care.



Immigrants are less likely than U.S.-born workers to receive employer-sponsored health coverage because they are concentrated in jobs that are less likely to provide it, like construction, agriculture, and service.<sup>1</sup> Even in states that have adopted Medicaid-like health coverage expansions for otherwise excluded immigrants, immigrants who earn more than their state's Medicaid income limit are left without any options for affordable coverage. Medicaid income eligibility thresholds are based on the Federal Poverty Level (FPL), which is the same in every contiguous state plus the District of Columbia. Higher-cost states often have higher wages, with the result that the workers can be low income for their communities but earn more than the Medicaid income limit. There are no immigration status restrictions on people's ability to buy health insurance directly from a health plan or insurance broker outside of the ACA's health insurance marketplace, but the cost of unsubsidized plans is too high for many people.

## **The Evidence: The Benefits of Access to Coverage**

The benefits of access to affordable health care and coverage are well-documented. Health coverage improves access to care, supports positive health outcomes, provides incentives for appropriate use of care, and reduces financial strain in individuals, families, and communities.

People with health coverage are more likely to have a regular source of treatment and to receive preventive care, assistance with management of chronic conditions, and timely diagnosis. Researchers have found that obtaining marketplace coverage led to improvements in health care access and utilization, including reductions in the probability that people would avoid seeking care because of concerns about cost, and decreases in people being unable to afford care they needed.<sup>2</sup> A longitudinal study of people who were uninsured in 2013 and became covered in 2014 showed significant improvements in access to care, including increases in the number who had a usual source of care, as well as those who had a checkup or blood pressure screening.<sup>3</sup>

Access to coverage saves lives. Analysis of the ACA provision that allowed dependents to stay on their parents' health coverage until age 26 showed an over 6 percent reduction in disease-related mortality.<sup>4</sup> A study of Massachusetts' 2006 reform, a precursor to the ACA, found significant reductions in mortality from all causes, as well as mortality from treatable conditions such as heart disease, infections, and cancer.<sup>5</sup>

Access to health insurance also has powerful economic effects. Multiple studies demonstrate that having health insurance improves various aspects of financial security, including reduced bankruptcy filings and the virtual elimination of catastrophic out of pocket expenses.<sup>6</sup>

At the community level, access to health coverage benefits local economies and health care systems. Access to affordable coverage allows individuals and families to spend their disposable income on essential goods and services. In addition to increasing tax revenues, this additional spending produces a "multiplier effect," as increased business revenues are passed on to suppliers and employees.

## **The Solution: ACA Section 1332 State Innovation Waivers**

State Innovation Waivers under Section 1332 of the ACA can provide a pathway to expanding access to coverage through private health plans. The purpose of the waivers is to allow states to undertake different approaches to meeting the ACA's goal of providing access to affordable, good-quality health insurance. Waivers must be at least as successful as the ACA in providing access to coverage and must do so at the same or lower cost to the federal government.

Section 1332 waiver authority is limited to specific sections of the ACA. States can't use section 1332 to waive fundamental consumer protections such as the prohibition against insurers denying coverage or charging higher premium rates to people with pre-existing health conditions.<sup>7</sup> While the Washington waiver demonstrates that Section 1332 can be used to waive immigration-based eligibility restrictions for access to healthcare marketplaces, it cannot be used to waive similar restrictions on eligibility for the subsidies that help to make marketplace plans affordable.

## What sections of the ACA can be waived under section 1332?

- ▶ **ACA Title I, Part I of Subtitle D** - essential health benefits and metal tiers for plans.
- ▶ **ACA Title I, Part II of Subtitle D** - minimum federal standards for marketplace plans and requirement that insurers treat their insured as a single risk pool when establishing rates. (The policy that requires marketplace consumers to be U.S. citizens or lawfully present is in this section.)
- ▶ **ACA Section 1402** - cost-sharing reductions.
- ▶ **Internal Revenue Code Sections 36B, 4980H and 5000A** - calculation and reconciliation of advance premium tax credits, requirements for large employers to offer coverage to employees and the individual mandate.

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See Sarah Lueck and Jessica Schubel, Understanding the Affordable Care Act's State Innovation ("1332") Waivers (Center on Budget and Policy Priorities, Sept. 5, 2017), <https://www.cbpp.org/research/health/understanding-the-affordable-care-acts-state-innovation-1332-waivers>

States can, and have, used 1332 waivers to create new coverage options, including options for undocumented residents. This could be done in combination with a Medicaid-like expansion—covering only those above the state's income limits—or it could be done as an alternative method of covering this population. In crafting a strategy, advocates must resolve a number of questions. Optimally, the option would provide the same coverage to all individuals as to those with existing eligibility. However, the private market coverage available through the ACA marketplaces is typically more expensive than Medicaid, and states need to provide the funding for subsidies to make the coverage affordable. States may look for funding through reductions in other areas of health care spending, taxes such as assessments on the insurance issuers who benefit from having new customers, or simple budget allocations. Financial constraints may restrict the options available to states.

The process of seeking a waiver is resource-intensive. State legislatures are required to pass legislation authorizing the use of a waiver, which is typically one of the first steps in the development of the waiver proposal.<sup>8</sup> States pursuing waivers must submit detailed proposals to the U.S. Department of Health and Human Services (HHS) and the Internal Revenue Service (IRS), and receive approval from both agencies. States are required to conduct a public notice and comment process during the development of the waiver proposal, and applications must contain supplementary materials that include actuarial and economic analysis.<sup>9</sup>

To be approved, proposed Section 1332 waivers must not increase the federal deficit over a 10-year period and must meet consumer protection standards referred to as “guardrails.” These include providing:

- ▶ coverage that is at least as comprehensive as the coverage provided without the waiver;
- ▶ coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as without the waiver; and
- ▶ coverage to at least a comparable number of residents as would be covered without the waiver.<sup>10</sup>

Waivers can be approved for up to five years and are renewable.

## Models from Two States

Washington and Colorado have leveraged ACA Section 1332 waivers to expand access to coverage for their immigrant residents through different approaches.

### Washington

Washington waived ACA Section 1312(f)(3), which limits the ability to purchase health plans through state-based marketplaces (SBMs) and the federal marketplace (Healthcare.gov) to U.S. citizens and lawfully present noncitizens, as defined in 45 CFR §152.2.<sup>11</sup> Waiving this provision will make it possible for undocumented residents and DACA recipients to use Washington’s SBM, Washington Health Plan Finder, to learn about, compare, and purchase health and dental plans effective January 2024. This is perhaps most beneficial to people in families with mixed immigration status, who will be able to enroll in one plan with a single deductible.



The waiver did not change eligibility for advance premium tax credits, the subsidies that help pay monthly premium costs, because the provision of the ACA that establishes eligibility for tax credits cannot be waived.<sup>12</sup> Washington currently has a program, Cascade Care Savings, that provides state-funded premium assistance to residents with incomes at or below 250 percent of the federal poverty level (FPL) who select and purchase Cascade Care silver and gold plans. The program is funded by legislative appropriations. People who become eligible under the waiver will receive state-based premium assistance through that program.<sup>13</sup>

### Colorado

Colorado's program, OmniSalud, is based on a series of of 1332 waivers and allows the state's undocumented residents and DACA recipients to purchase coverage through a subsidiary platform run by the state's SBM, Connect for Health Colorado.<sup>14</sup> Participants receive subsidies for OmniSalud via the Colorado Health Insurance Affordability Enterprise (the Enterprise), a state-owned enterprise that funds several efforts intended to lower cost and availability of marketplace health insurance programs.<sup>15</sup> Due to budget constraints, OmniSalud was capped at 10,000 people in 2023, and 11,000 people in 2024.

By tackling affordability issues in the state holistically, Colorado has been able to find a way to address undocumented residents in its health care affordability programs. The first step was creating a reinsurance program in 2019, under which the state reimburses insurance companies for high-cost claims, allowing the

companies to charge lower premiums.<sup>16</sup> In 2021, the state received approval of another 1332 waiver to create "Colorado Option Plans," which have standardized benefits and cost sharing, simplifying access for consumers.<sup>17</sup> A subsequent amendment to the 2021 waiver established the OmniSalud programs using the Colorado Option model.<sup>18</sup> The first Colorado Option plans were made available on the standard SBM in 2022 and on OmniSalud in 2023.



Colorado law requires insurers to offer Colorado Option Plans on the SBM in every county in which they offer individual or small market plans.<sup>19</sup> Insurers are required to lower the premiums for the plans by specified percentages over a period of years, resulting in an overall decrease in premiums in the state's individual health insurance market.

By creating a comprehensive plan to address affordability, Colorado also created the funding mechanism for covering undocumented residents. Both the reinsurance program and the Colorado Option reduce overall premiums on the SBM, which decreases costs for the federal government because the amount of advance premium tax credit subsidies it needs to pay is reduced. When 1332 waivers reduce the amount the federal government would need to spend on an SBM (as compared to what it would spend absent the waiver), the savings are 'passed through' to the state.<sup>20</sup> Colorado estimates that the two programs will save the federal government \$214 million in 2023 and more than \$1.6 billion over the waiver's five-year duration, which provides a substantial funding source for both OmniSalud and the reinsurance program.<sup>21</sup> Fees assessed on hospitals and insurance companies under state law provide additional funding.<sup>22</sup>

## **Two-pronged Strategy: Waivers to Expand Access to Coverage Plus State-funded Premium Subsidies**

Both Washington and Colorado had state-funded subsidy programs for marketplace consumers before expanding access to immigrants. The existence of these programs made the addition of immigrants an incremental, rather than a new, cost. Both states provide examples of how Section 1332 waivers are a building block in a set of interconnected health equity policies. Washington operates a state-funded program that parallels Medicaid for residents at lower income levels. In Colorado, the budget limits how many people can be enrolled, but this constraint will be eased to some extent in 2025, when the state begins covering undocumented children in their Medicaid program.

Advocates need to work closely with their states in advocating for a waiver. The waiver must be submitted by the state as a matter of law,<sup>23</sup> and in any case few advocates have the resources required to develop the application. As in any campaign for health care expansion, advocates should strive to build a coalition that includes affected individuals and healthcare providers. With respect to 1332 waivers in particular, it is important to engage the state association of health plans. Health plans work closely with SBMs and their support for or opposition to a waiver proposal is very influential.

# Learning from State Campaigns: Washington

By Isobel Mohyeddin

In 2022, Washington made history as the first state to expand access to its state health insurance marketplace to all residents – regardless of immigration status – using an ACA Section 1332 State Innovation Waiver. Effective November 1, 2023, undocumented individuals are able to purchase health and dental plans through the marketplace for coverage starting January 1, 2024, with state-funded premium assistance available to those with household incomes under 250 percent of the Federal Poverty Level.

Lee Che Leong from Northwest Health Law Advocates (NoHLA) estimates that over 100,000 Washingtonians will gain access to coverage as a result of the waiver.<sup>24</sup>

The waiver approval builds on Washington's long history as a leader in expanding health care access. In Leong's words, "This is the latest step in decades of work to expand coverage to undocumented Washingtonians, including past successful efforts to 'cover all kids' and expand pregnancy/postpartum and family planning care."<sup>25</sup>

In the years leading up to the approval, a statewide coalition of over 100 organizations worked together to advance the waiver as a part of a larger vision for immigrant health equity. As with many campaigns that took place during the COVID-19 pandemic, the question of funding and declining revenues posed a challenge, as state funding for subsidies became more limited. According to Leong, "Even though undocumented immigrants contribute to Washington's vibrant communities and economies – paying \$371 million in Washington taxes in 2019 – unfortunately, we continued to face reluctance."<sup>26</sup>

In order to continue pushing the waiver forward, the coalition forged strong relationships with partners at Washington's Health Benefit Exchange (the state's health insurance marketplace) and worked with dedicated champions in Washington's state legislature. Maintaining partnerships with community-based organizations was also critical to communicating these updates with Washington's immigrant communities and letting them know about the impending changes.

## Conclusion

ACA State Innovation Waivers create opportunities for states to test innovative approaches to expanding access to coverage through the private market. While Section 1332 waivers alone may not achieve Health for All, some states are using a combination of waivers and state funds to help their immigrant residents obtain health insurance. Particularly in states that provide Medicaid-like coverage regardless of immigration status, advocates may want to explore a waiver strategy to extend access to coverage to their states' remaining uninsured.

# Endnotes

1. Drishti Pillai and Samantha Artiga, "Employment Among Immigrants and Implications for Health and Health Care", (Kaiser Family Foundation, June 12, 2023), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/employment-among-immigrants-and-implications-for-health-and-health-care/>
2. Sherry A. Glied, Sara R. Collins, and Saunders Lin, "Did The ACA Lower Americans' Financial Barriers To Health Care?", *Health Affairs*, Vol. 39 No. 3, 379, March 2020, <https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01448>; Andrea Louise Campbell and Lara Shore-Sheppard, "The Social, Political, and Economic Effects of the Affordable Care Act: Introduction to the Issue", *RSF: The Russell Sage Foundation Journal of the Social Sciences*, July 2020, 6 (2) 1-40, <https://www.rsfjournal.org/content/6/2/1>
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4. Aparna Soni, Laura R. Wherry, and Kosali I. Simon, "How Have ACA Insurance Expansions Affected Health Outcomes? Findings From the Literature", *Health Affairs* 39, No. 3, 371 (March 2020), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01436>
5. Benjamin D. Sommers, M.D., Ph.D., Atul A. Gawande, M.D., M.P.H., and Katherine Baicker, Ph.D., "Health Insurance Coverage and Health - What the Recent Evidence Tells Us", *N. Engl. J. Med.* 377:6 (August 10, 2017), <http://194.225.51.22/filegallery/2299016929/nezamoleslami%2031%20ordibehesht.pdf>
6. Ibid.
7. See Sarah Lueck and Jessica Schubel, "Understanding the Affordable Care Act's State Innovation ("1332") Waivers" (Center on Budget and Policy Priorities, Sept. 5, 2017), <https://www.cbpp.org/research/health/understanding-the-affordable-care-acts-state-innovation-1332-waivers>
8. There is an option for an executive department to seek the waiver based on "existing authority," see 83 Fed Reg. 53575, 53582-83 (Oct. 24, 2018) (describing requirements and when existing authority is sufficient). LINK?
9. 45 CFR §155.1308.
10. 42 USC §18053(b).
11. 42 USC §18032(f)(3).
12. ACA Section 1411, 42 U.S. Code § 18081.
13. See Washington: State Innovation Waiver (Center for Medicare and Medicaid Services, Dec. 9, 2022). <https://www.cms.gov/files/document/1332-wa-fact-sheet.pdf>
14. References to the SBM or Connect for Health Colorado in this section refer to the parent exchange and not to the subsidiary platform.
15. See C.R.S. 10-16-1201, et seq., establishing the Health Insurance Affordability Enterprise.



16. See Colorado 1332 State Innovation Waiver Request Application to Develop a State Reinsurance Program (Colorado Division of Insurance, May 20, 2019). [https://drive.google.com/file/d/1\\_QTfHnQvamJWeupH7AScekJe3A\\_jNo5H/view](https://drive.google.com/file/d/1_QTfHnQvamJWeupH7AScekJe3A_jNo5H/view)
17. See Colorado Option 2023 Standard Plans: Quality and Affordable Health Insurance Coverage (Colorado Division of Insurance, undated), <https://drive.google.com/file/d/1HcCxoBi76XCHEwVN3O3qKbPUa6vdkFAk/view>
18. See Colorado Section 1332 Innovation Waiver Amendment Request: Colorado Option (Colorado Division of Insurance, Nov. 30, 2021), <https://drive.google.com/file/d/1SUy-iNz3i7IIRTPTqy2OJgNYH1oyN5mX/view>
19. C.R.S. 10-16-1305.
20. See Brief: State Roles Using 1332 Waivers (National Council of State Legislators, August 30, 2023), <https://www.ncsl.org/health/state-roles-using-1332-health-waivers#:~:>
21. Colorado: State Innovation Waiver – Amendment (Centers for Medicare and Medicaid Services, June 23, 2022), <https://www.cms.gov/files/document/1332-co-amendment-fact-sheet.pdf>. A reinsurance plan reimburses insurers when their total claims costs exceed a specified threshold. Since the insurers operate with reduced risk, they are able to lower their premiums.
22. Health Insurance Affordability Act, C.R.S. (§§ 10-16-1201 – 10-16-1208).
23. 42 USC §18053(a).
24. Leong, Lee Che. Interview. Conducted by Isobel Mohyeddin. October 2, 2023.
25. Ibid.
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