CMS Approves Colorado's Section 1332 Waiver Amendment for Colorado Option

On June 23, 2022, the Centers for Medicare and Medicaid Services (CMS) approved Colorado's application to amend its existing Section 1332 waiver, and therefore allow full implementation of the Colorado Option – a standardized health benefit plan that must offer a culturally responsive provider network and satisfy premium reduction targets. The five-year waiver also extends Colorado's existing reinsurance program. Colorado will use federal pass-through funding from premium tax credit (PTC) savings to support the reinsurance program and a new state subsidy program. The Colorado Option will be available in the individual and small group markets beginning plan year 2023.

How the Section 1332 Waiver Amendment Supports Premiums Reductions

As noted in Table 1, the amended waiver is instrumental for carriers of Colorado Option plans to implement required premium reduction targets. Colorado Option plans are required to reduce 2021 premium rates by 5 percent in 2023, 10 percent in 2024, and 15 percent in 2025. After 2025, carriers may only increase premiums by national medical inflation.

Table 1. Policy Requirements and Waiver Implications

ACA Statute	Section 1312(c)(1) and Section 1312(c)(2) require a single risk pool in the individual and small group markets.
Implementing Regulation	45 CFR 156.80 requires health insurance premium rates be based on an index rate based on the total combined claim costs for providing essential health benefits within the single risk pool of that state market, and only permits market-wide adjustments and certain plan-level adjustments to the index rate. Plan-specific factors are (1) actuarial value and cost-sharing design; (2) provider network, delivery system characteristics, and utilization management practices; (3) benefits provided in addition to the essential health benefits; (4) administrative costs, excluding Exchange user fees; and (5) with respect to catastrophic plans, the expected impact of the specific eligibility categories for those plans.
Waiver Implications	Carriers will be permitted to adjust only premium rates of Colorado Option plans in accordance with savings generated by Colorado Option plans through reduced health care provider payments. These savings will not be reflected in premium rates for other plans in the individual and small group markets. Carriers will also be permitted to make a new plan-level adjustment to the index rate that allow carriers to adjust premiums for Colorado Option plans to satisfy the premium reduction targets.

Impacts of Section 1332 Waiver Amendment

CMS determined that the amended Section 1332 waiver adheres to the four guardrails of 1332 waivers: coverage, affordability, comprehensiveness, and deficit neutrality. On behalf of Colorado, Wakely Consulting Group estimates that the amended Section 1332 waiver – specifically, the required premium reductions, reinsurance, and use of pass-through funding for state-based subsidies – will increase individual enrollment in affordable, comprehensive coverage and lower federal spending as compared to the baseline scenario without any waiver. The amended waiver is estimated to generate $1.618 billion in federal savings over the five-year period.

Table 2. Impacts of Waiver Amendment Compared to Baseline

Year	Premiums	Individual Enrollment	Federal Savings
2023	-22.3%	4.1%	$213.8 million
2024	-27.4%	9.6%	$277.3 million
2025	-32.1%	14.9%	$341.5 million
2026	-32.1%	15.1%	$347.8 million
2027	-32.1%	15.1%	$367.6 million

Potential Impacts of Federal Policy Changes on State-Based Subsidy Program

Beginning in plan year 2023, the new state-based subsidy program will provide subsidies to individuals that are ineligible for federal PTCs due to immigration status or lack documentation or are ineligible due to the so-called "family glitch." Qualified individuals with an income up to 150 percent of the federal poverty level (FPL) will be offered a plan with a $0 monthly premium and 94 percent actuarial value.

Notably, two potential federal policy changes regarding PTC eligibility could unlock additional federal resources, and therefore allow the state-based subsidy program to provide more generous subsidies.

- **Extension of Temporary American Rescue Plan Enhancements to PTCs** – The American Rescue Plan Act of 2021 (P.L. 117-2) temporarily increased the PTCs and extended eligibility to people with incomes above 400 percent of FPL. The enhancements expire at the end of 2022, but congressional Democrats are pushing to extend the enhancements beyond 2022 through the budget reconciliation process.

- **"Family Glitch" Fix** – The Biden Administration proposed a rule to fix the "family glitch," which prevents family members from accessing PTCs if an employee's self-only coverage meets the affordability threshold. If finalized, the regulation would take effect beginning plan year 2023.

  Under current regulation, non-employee family members are not eligible for PTCs for individual market coverage if an employee is offered employer sponsored coverage that is "affordable." An employer-sponsored plan is considered "affordable" if it meets two requirements: (1) employee required contribution for self-only coverage does not exceed the 9.5 percent affordability threshold (as adjusted); and (2) employer-sponsored plan provides "minimum value" to the employee, meaning it covers at least 60 percent of the total allowed cost of benefits and provides "substantial coverage of inpatient hospital services and physician services." For plan years beginning in calendar year 2022, the affordability threshold is 9.61 percent of that employee's household income. Current regulation does not account for the cost of coverage for family members, such a spouse and dependents.

  The proposed regulation would apply the affordability rule to family coverage. Therefore, if the proposed regulation is finalized, an eligible employer-sponsored plan would not be considered "affordable" for related individuals if the employee's required contribution for family coverage exceeds the affordability threshold. Consequently, the related individuals would be eligible for PTCs in the individual market.