



July 2, 2019

The Honorable R. Alexander Acosta  
Secretary, Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The Honorable Alex Azar  
Secretary, Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

The Honorable Steven Mnuchin  
Secretary, Department of Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220  
RE: CMS-9923-NC

RE: CMS-9936-NC2

*Submitted Electronically via [www.regulations.gov](http://www.regulations.gov)*

Dear Secretaries Acosta, Azar and Mnuchin,

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants and employee benefits specialists. We are pleased to have the opportunity to provide comments in response to your request for information titled "Request for Information Regarding State Relief and Empowerment Waivers" (CMS-9936-NC2) published in the *Federal Register* on May 3, 2019.

The members of NAHU work daily to help millions of individuals and employers of all sizes purchase, administer and utilize health insurance coverage. Our organization is a federation of state and local chapters in all 50 states. NAHU members are very active in their state capitols and routinely work with local legislators and regulators on measures to improve the competitiveness of state health insurance markets. As such, we are pleased to have the opportunity to provide you with information about state relief and empowerment waivers, which we believe offer excellent opportunities for health insurance market innovation in the states.

To ensure that our comments are as meaningful as possible, we asked for insight from a representative group of brokers who are either currently working with state lawmakers on potential Section 1332 waiver plans or have provided assistance and expertise to state-level officials on waivers that have already been approved. The following letter includes their ideas about potential waiver concepts, as well as stakeholder perceptions about the waiver process as experienced to date. Our goal is to provide you with helpful information that will both encourage other states to apply for Section 1332 waivers and make the process easier for them to navigate.

NAHU members genuinely appreciate the stated intent of this RFI, which is to "solicit ideas and encourage additional thinking and innovation as states consider developing Section 1332 waiver plans." To that end, NAHU members believe that state relief and empowerment waivers could be used to increase coverage access and affordability. One population that needs assistance are people who fall into the "family glitch" because they have an



offer of employer-based coverage that meets an Affordable Care Act affordability safe harbor but that coverage is still too expensive for their whole family to afford. We encourage states to explore the idea of using a Section 1332 waiver to provide premium assistance to individuals who wish to cover dependents on employer-sponsored plans, leveraging both employer-provided premium contributions and federal-subsidy funds. To improve access to coverage generally, we also suggest that states consider using a waiver to allow individuals to purchase off-exchange individual coverage using premium tax credits.

Another area of potential state-level innovation using Section 1332 waivers is plan design. Currently, all individual and small-group plans are designed to meet the ACA's metal-level designations. While this framework provides some consistency for consumers, as well as an easy way to compare plan options and prices, the rigid actuarial-value limitations for each coverage level can impede product innovation and impact prices. The framework also makes it difficult to combine an account-based plan with coverage in some cases, so state-based relief and empowerment waivers might be designed to resolve those problems. The rules regarding essential health benefit requirements, particularly concerning pediatric dental and vision coverage, also create plan-design issues and cost increases in many states. The current regulatory structure does not match the way many business and individual consumers wish to purchase such coverage, and a state could use a waiver to make consumer-friendly changes that would also reduce prices.

Beyond these ideas, our membership believes a meaningful way the Departments could encourage more innovative thinking and action amongst the states would be to provide more direct opportunities for policymakers and stakeholders from different states to meet and discuss potential waiver ideas, strategies for related state-level policy construction and information about the waiver process. It is our observation that few state lawmakers have the time or resources for real policy innovation, particularly on a solo basis. That is why broad policy ideas often sweep across states, with individual lawmakers merely making tweaks to meet the needs of their specific populations. NAHU encourages the Trump Administration to embrace this phenomenon rather than fight it. By devoting significant resources to creating in-person and virtual forums for relief and empowerment waiver collaboration among states, we believe the Departments will spark innovation and inspire more waiver activity. Additionally, if the Departments can help facilitate state-level waiver collaboration, lawmakers may be able to join forces on the expensive and time-consuming aspects of the waiver-development process, leveraging economies of scale.

Finally, to encourage more states to apply for relief and empowerment waivers, NAHU urges the Trump Administration to prioritize eliminating the hurdles states currently experience when crafting and applying for Section 1332 waivers. States that are considering a new application certainly examine what their counterparts have gone through already, and we believe that your unwavering commitment to addressing both real and perceived barriers to entry would be very influential. Our members who live and work in states that have already sought such waivers report that the upfront costs to the state can be a significant obstacle. These costs include both the actual expenses associated with the waiver development and application process, such as the price of the actuarial study, and the resources each state will need to operate its waiver program until federal pass-through funds are realized. NAHU members have observed great hesitancy in state lawmakers to expend time and financial resources on anything short of a sure thing, and we encourage the Departments to work closely with state officials to alleviate their concerns.



Political perceptions are another challenge identified by our members, particularly those in states that are currently working on waiver applications. Without exception, our members in these states note that the Departments have devoted significant resources to working with them on potential waiver applications and that the Trump Administration's assistance has been tremendously helpful and completely nonpartisan. Despite this effort, our members have noticed some political resistance from state lawmakers on both sides of the aisle. This resistance can be particularly acute among those policymakers who are slightly more removed from the actual waiver-application process but are still necessary to ensure its completion. NAHU encourages the Trump Administration to work with each state on these political obstacles, including by reaching out to such lawmakers directly. It would be wonderful if the Administration would make an effort to hear their concerns, emphasize the bipartisan nature of the waivers, and explain the state-specific policy advantages of state relief and empowerment waivers in detail.

### **Conclusion**

The members of NAHU are grateful for the opportunity to provide information to you about state relief and empowerment waivers as authorized by Section 1332 of the ACA. If you have any questions about our comments, or if NAHU and its members can be of assistance as you move forward, please do not hesitate to contact me at either (202) 595-0787 or [jtrautwein@nahu.org](mailto:jtrautwein@nahu.org).

Sincerely,

Janet Stokes Trautwein  
Chief Executive Officer  
National Association of Health Underwriters