

## Principles for a Texas 1332 Waiver

Texas should develop and pursue a well-designed 1332 waiver to help make quality health care coverage more affordable and increase competition in our individual insurance market, while maintaining coverage in comprehensive and affordable individual market plans that more than 1 million Texans rely on today. The organizations listed below support state policies that will achieve these objectives and seek to work with state lawmakers to attain them.

Of particular importance, a 1332 waiver should be a part of a comprehensive state approach designed to significantly reduce the state's high uninsured rate. A 1332 waiver alone will be insufficient to address Texas' uninsured challenge.

Texas has the highest uninsured rate in the nation for children, adults, and women of childbearing age —and it's getting worse. Even before staggering job losses due to COVID-19, 5 million Texans (18%) were uninsured.<sup>1</sup> In just March and April, 1.6 million Texans lost job-based health insurance because of COVID-related job losses.<sup>2</sup> Only half of Texans who lose job-based health insurance during the pandemic will find other coverage; the other half will become uninsured.<sup>3</sup>

The vast majority of uninsured Texans:<sup>4</sup>

- Are U.S. citizens,
- Have low or moderate incomes, and
- Work or are in a family with a worker, but many low-wage jobs do not offer health insurance.

Texas' high uninsured rate contributes to many challenges facing our state, including high rates of maternal and infant mortality, difficulty accessing treatment for mental health and substance use disorders, pressure on local property taxes, rural hospital closures, tenuous family financial security, and our capacity to respond to public health crises. When Texans are insured, it's easier for them to find and keep a job, catch cancer before it spreads, improve their health before becoming pregnant, pay their medical bills, and more.

**We recommend that any Texas 1332 waiver adhere to the following principles:**

- 1. A 1332 waiver should be one part of a comprehensive approach to covering the uninsured in Texas that also includes covering uninsured, low-income adults.**

Alongside a 1332 waiver, Texas must accept federal funding to extend Medicaid coverage to Texas adults below 138% of the federal poverty level, which includes low-wage working parents and adults caring for a disabled family member.<sup>5</sup> A 1332 waiver **cannot** extend coverage to working poor adults in the "coverage gap" who are excluded from Texas Medicaid today, but earn too little to get Marketplace subsidies under federal law.<sup>6</sup> Federal funding to cover working poor adults can only be accessed through Medicaid expansion or a Medicaid 1115 waiver.

Today, 14 states have federally-approved 1332 reinsurance waivers,<sup>7</sup> which primarily benefit higher-income individuals who are ineligible for Medicaid or Marketplace subsidies.<sup>8</sup> These states generally anticipate a relatively small increase in coverage from their 1332 waiver.<sup>9</sup> Each of these 14 states has

already closed their Medicaid coverage gap, ensuring that uninsured adults in low-wage jobs that do not offer coverage have access to Medicaid.<sup>10</sup>

In addition to seeking a 1332 reinsurance waiver and closing our Medicaid coverage gap, Texas should boost outreach and enrollment efforts to uninsured individuals who are eligible for Marketplace subsidies today. Marketplace subsidies are fully federally funded and Texas should seek to maximize this federal investment in coverage.

**2. A Texas 1332 waiver must adhere to statutory guardrails that ensure coverage under the waiver will be as affordable and comprehensive as today and ensure that even more Texans are enrolled in affordable and comprehensive coverage.**

More than 1 million Texans have enrolled in 2020 Marketplace coverage, and 9-in-10 of them receive a federally funded subsidy to make monthly premiums affordable.<sup>11</sup> In addition, 6-in-10 have plans with reduced out-of-pocket costs, like deductibles and copays, to improve access to care. Maintaining adequate financial assistance is critical to ensure that both health coverage and health care are affordable for Texans with lower incomes.

Today, individual market coverage provides comprehensive benefits and strong protections for people with pre-existing conditions. Plans cover Essential Health Benefits with no annual or lifetime limits, and insurers cannot deny coverage or charge more due to pre-existing conditions.

Our organizations support these protections. Any 1332 waiver must not diminish them by promoting limited-benefit plans or plans that exclude coverage of pre-existing conditions. Such plans would siphon healthy individuals from the individual market, driving up premiums for individuals who want or need comprehensive coverage or who would be denied by bare-bones plans, including Texans with chronic or complex diseases, such as cancer, diabetes, and mental health or substance use conditions. Limited-benefit plans can also expose patients to extremely high costs in the event of an emergency or new diagnosis and add to uncompensated care burdens on providers.<sup>12</sup> In addition, we would not support a waiver that increases premiums or out-of-pocket costs for lower-income consumers or people with significant health care needs.<sup>13</sup>

A Texas 1332 waiver must immediately result in more Texans getting enrolled in coverage with affordable premiums and out-of-pocket costs, comprehensive benefits, and strong protections for people with pre-existing conditions.

**3. A Texas 1332 waiver should use reinsurance to reduce the price of full-cost premiums while making the Texas individual insurance market more stable and competitive.**

Fourteen of 15 states with federally-approved 1332 waivers have established reinsurance programs.<sup>14</sup> Reinsurance programs provide payments to individual-market health insurers that help offset the costs of enrollees with high health care spending. For example, Wisconsin's reinsurance program reimburses insurers for 50% of expenses when an enrollee's annual health care costs fall between \$50,000 and \$250,000. Insurers, in turn, reduce their premiums because they face less risk from high-cost enrollees.

Reinsurance payments come from federal “pass-through” funding available through 1332 waivers, combined with a state share.<sup>15</sup> 1332 reinsurance waivers have reduced individual-market premiums by 17% on average, and states must fund about one-third of the program’s costs, on average.<sup>16</sup> A Texas 1332 waiver should be targeted toward establishing a state-administered reinsurance program, an innovation that has proven to work in other states to lower premiums, reduce market volatility, and encourage insurers to remain in or enter the market. Moreover, recent 1332 waivers that focus solely on reinsurance have been approved quickly by CMS. On the other hand, the few states that have proposed 1332 waivers with provisions other than reinsurance that would harm consumers by reducing affordability, benefits, or transparency have not been approved by CMS to date.<sup>17</sup>

**4. A Texas 1332 waiver must support clear and unbiased information on comprehensive health plan options for consumers, as well as robust enrollment assistance.**

Today, HealthCare.gov gives clear, comparable, and unbiased information to consumers on their health plan options and supports enrollment assistance through agents, community-based organizations, community health centers, and hospitals. It also provides a “no-wrong-door” approach that ensures Marketplace applicants who are Medicaid- or CHIP-eligible get the correct coverage. At the same time the federal Marketplace *already* supports direct enrollment through web-brokers and insurers, so that consumers who want to, can enroll without going to HealthCare.gov.

Texas must either maintain access to HealthCare.gov, or develop a state-based Marketplace that performs all of HealthCare.gov’s critical and complex functions while making improvements like streamlining enrollment and boosting outreach and enrollment assistance. A neutral and centralized Marketplace website that provides unbiased, clear, and complete information on quality plan options is necessary to ensure consumers can make fully informed choices. Without a centralized enrollment platform with unbiased information, it will be harder for consumers to make fully informed choices and easier for scams to flourish.

**5. A Texas 1332 waiver should be data driven.**

Texas should start its work by articulating measurable goals for increasing the number of Texans with comprehensive coverage and reducing premiums. The waiver design process must be informed by comprehensive market and actuarial analyses that show anticipated changes to affordability and enrollment for populations based on income, race, geography, age, health status, etc.

**6. A Texas 1332 waiver should be designed in conjunction with diverse stakeholders with ample opportunity for public input.**

We recommend that Texas create a taskforce to design its 1332 waiver, as many other states have done. The taskforce should include representatives from consumer and provider organizations as well as insurers. The process should provide ample opportunity for public input as the waiver is being designed, not merely after the application is complete and nearly ready for submission.

**Supporting organizations:**

AARP Texas  
American Diabetes Association  
Children's Defense Fund - Texas  
Coalition of Texans with Disabilities  
Every Texan (formerly Center for Public Policy Priorities)  
Methodist Healthcare Ministries of South Texas  
National Alliance on Mental Illness (NAMI) Texas  
National Association of Social Workers – Texas Chapter  
National Multiple Sclerosis Society  
Texas Brain Injury Providers Alliance  
Texas Hospital Association  
Texas Organization of Rural & Community Hospitals  
Texas Parent to Parent  
The Leukemia & Lymphoma Society  
Young Invincibles

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<sup>1</sup> U.S. Census Bureau, 2018 American Community Survey

<sup>2</sup> Kaiser Family Foundation, “Eligibility for ACA Health Coverage Following Job Loss,” May 13, 2020, <https://www.kff.org/coronavirus-covid-19/issue-brief/eligibility-for-aca-health-coverage-following-job-loss/>.

<sup>3</sup> The Urban Institute, “How the COVID-19 Recession Could Affect Health Insurance Coverage,” May 2020, [https://www.urban.org/sites/default/files/publication/102157/how-the-covid-19-recession-could-affect-health-insurance-coverage\\_0.pdf](https://www.urban.org/sites/default/files/publication/102157/how-the-covid-19-recession-could-affect-health-insurance-coverage_0.pdf).

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<sup>4</sup> Kaiser Family Foundation analysis of U.S. Census Bureau, 2018 American Community Survey, <https://www.kff.org/state-category/health-coverage-uninsured/>, and Every Texan analysis of U.S. Census Bureau, 2018 American Community Survey.

<sup>5</sup> Under federal law, Texas can extend Medicaid coverage to adults and parents with incomes up to 138% of the federal poverty level, or \$17,609/year for an individual. This action would make [1.5 million](#) uninsured, low-income adults in Texas eligible for affordable coverage.

<sup>6</sup> See Center of Budget and Policy Priorities, “Frequently Asked Questions about ACA Section 1332 Waivers and Medicaid,” Sept 2019, <https://www.cbpp.org/research/health/frequently-asked-questions-about-aca-section-1332-waivers-and-medicaid>.

<sup>7</sup> SHADAC, “State-Based Reinsurance Programs via 1332 State Innovation Waivers,” <https://www.shadac.org/publications/resource-state-based-reinsurance-programs-1332-state-innovation-waivers>.

<sup>8</sup> 1332 reinsurance waivers lower the price of full-cost premiums for people who *do not qualify for Marketplace subsidies*, including those with income over 4 times the poverty level (more than \$104,800 a year for a family of four). 1332 reinsurance waivers *do not* lower month premiums for people who have Marketplace subsidies (individuals with incomes from 100% to 400% of poverty). However, states have options to combine other policies with a 1332 reinsurance waiver to increase affordability for lower-income individuals, including policies discussed in Families USA, How States Can Use New Revenue to Lower Consumer Costs for Individual Health Insurance, [https://familiesusa.org/wp-content/uploads/2020/03/COV\\_How-States-Individual-Market\\_Report\\_03-13-20a.pdf](https://familiesusa.org/wp-content/uploads/2020/03/COV_How-States-Individual-Market_Report_03-13-20a.pdf).

<sup>9</sup> Most approved state waiver applications anticipate that premium reductions achieved through reinsurance will increase individual market enrollment from 1-3%. State 1332 waiver applications available at [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_State\\_Innovation\\_Waivers-](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-).

<sup>10</sup> States with approved 1332 reinsurance waivers include: Alaska, Colorado, Delaware, Maine, Maryland, Minnesota, Montana, New Hampshire, New Jersey, North Dakota, Oregon, Pennsylvania, Rhode Island, and Wisconsin. All of these, except for Wisconsin, have expanded Medicaid. Wisconsin provides Medicaid eligibility up to the poverty level under a Medicaid waiver, so it has no Coverage Gap that would leave adults in poverty with no affordable options.

<sup>11</sup> CMS, Early 2020 Effectuated Enrollment Snapshot, July 23, 2020, <https://www.cms.gov/CCIIO/Resources/Forms-Reports-and-Other-Resources/Downloads/Early-2020-2019-Effectuated-Enrollment-Report.pdf>

<sup>12</sup> Milliman, “The impact of short-term limited-duration policy expansion on patients and the ACA individual market,” February 2020, <https://www.ils.org/sites/default/files/National/USA/Pdf/STLD-Impact-Report-Final-Public.pdf>.

<sup>13</sup> Georgia’s initial 1332 waiver application, much of which has been withdrawn by the state, [proposed](#) capping financial assistance and allowing waitlists for subsidized coverage, creating plans with much higher out-of-pocket costs, reducing benefits, and eliminating the Health Insurance Marketplace. Iowa’s 1332 waiver application, withdrawn by the state, [proposed](#) eroding affordability protections for out-of-pocket costs for lower-income enrollees. In its first year, Colorado’s existing 1332 reinsurance program reduced full-cost premiums by 18% on average; however, reinsurance also [resulted](#) premiums that were 19% higher on average for lower-incomes, subsidy-eligible enrollees.

<sup>14</sup> Hawaii has the only federally approved 1332 waiver that does not establish reinsurance. [Hawaii’s waiver](#) allows the state to maintain its long-standing requirement that employers provide health insurance and forego setting up a small business (SHOP) exchange.

<sup>15</sup> Sources of reinsurance state share available at SHADAC, “State-Based Reinsurance Programs via 1332 State Innovation Waivers,” <https://www.shadac.org/publications/resource-state-based-reinsurance-programs-1332-state-innovation-waivers>.

<sup>16</sup> Avalere, State-Run Reinsurance Programs Reduce ACA Premiums by 16.9% on Average, October 2019, <https://avalere.com/press-releases/state-run-reinsurance-programs-reduce-aca-premiums-by-16-9-on-average>.

<sup>17</sup> See endnote 13. Georgia’s modified 1332 waiver application that proposes eliminating the Health Insurance Marketplace would likely [depress enrollment](#). It is still pending with CMS.