

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201



August 29, 2019

VIA ELECTRONIC MAIL: Dean.Cameron@doi.idaho.gov

Dean Cameron
Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

Dear Director Cameron:

Thank you for your submission on July 15, 2019 of Idaho's application for a State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (PPACA). Idaho seeks to waive section 36B(c)(2)(B) of the Internal Revenue Code, and section 1402 of the PPACA, as applicable, to the extent necessary to modify the eligibility criteria for the Premium Tax Credit (PTC) and Cost Sharing Reductions (CSRs) to permit Idahoans with income between 100% and 133%¹ of the Federal Poverty Level (FPL) to qualify for these federal subsidies regardless of their underlying eligibility for Medicaid, provided they are not enrolled in Medicaid.² As explained below, the Department of Health and Human Services (HHS) and the Department of the Treasury (collectively, the Departments) believe that, even if the application were revised to include the correct elements, Idaho's application would not be approvable because it could not demonstrate compliance with the statutory guardrails, in particular the deficit neutrality guardrail.

45 CFR 155.1308(f)(3)(iv) and 31 CFR 33.108(f)(3)(iv) state that the analyses, actuarial certifications, data, assumptions, analysis, targets and other information must provide the HHS Secretary and the Secretary of the Treasury, as applicable, with the necessary data to determine that the state's proposed waiver will meet the four guardrails as part of a section 1332 waiver. Specifically, as the Departments explain in the 2018 Guidance³: "For each of the guardrails, the state should clearly explain its estimates with and without the waiver. The actuarial and economic analyses must compare comprehensiveness, affordability, coverage, and net federal spending and revenues under the waiver to those measures absent the waiver (the without waiver baseline) for each year of the waiver."

¹ Eligibility would extend up to 138% of the FPL, as the income level would only be counted after factoring in the 5% income disregard provided by section 1902(e)(14)(I)(i) of the Social Security Act.

² Idaho Section 1332 Waiver Application – Coverage Choice, pgs. 11-12.

³ See 83 FR 53575 at 53581, available online <https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers>. Also see 77 FR 11700 at 11702, available online <https://www.govinfo.gov/content/pkg/FR-2012-02-27/pdf/2012-4395.pdf>.

In order to accurately demonstrate the effect of the 1332 waiver on these four guardrails, the analysis needs to show the effect of the 1332 waiver holding all other factors constant. In its application, Idaho assumed in the without waiver baseline that individuals with incomes between 100% and 133% of FPL *are not* eligible for Medicaid, but assumed in the with waiver scenario that those same individuals *are* eligible for Medicaid. These assumptions do not hold Medicaid eligibility constant and, therefore, are not an appropriate set of assumptions for the actuarial analysis. As such, the application does not provide sufficient information for the Departments to evaluate the waiver at this time.

The Departments acknowledge that Idaho is directed by state law⁴ to seek federal approval to expand Medicaid to persons with incomes between 100% and 133% of the FPL with an effective date of January 1, 2020.⁵ Idaho has submitted Medicaid state plan amendments to CMS consistent with state law. Idaho has indicated it anticipates that they will be approved such that Medicaid expansion will take effect on January 1, 2020⁶, which also is the effective date of the proposed 1332 waiver. Indeed, the stated purpose of the proposed 1332 waiver application is to change eligibility criteria under Internal Revenue Code section 36B of the Internal Revenue Code, and section 1402 of the PPACA as applicable, to allow consumers to choose to enroll in plans in Idaho's state-based Exchange and receive the PTC and CSRs, even though they are eligible for Medicaid beginning in 2020.

If the assumption that Idaho's Medicaid expansion is effective beginning 2020 were applied consistently to both the without waiver and with waiver scenarios, the analysis in the application would need to demonstrate that permitting individuals between 100% and 133% of the FPL to continue to receive the PTC and CSRs in lieu of enrolling in Medicaid would not violate any of the statutory guardrails. Specifically, it would be critical that the state demonstrate that the 1332 waiver would not increase the federal deficit. Because people eligible for Medicaid in the without waiver scenario would be newly eligible for PTCs in with waiver scenario, the state would need to show that the associated federal cost of providing PTCs and CSRs for those who are expected to elect such coverage is less than the associated federal cost of Medicaid for those individuals.⁷

Currently, the state's application also contains no information to support a conclusion that the proposed 1332 waiver would not increase the federal deficit, when evaluated under the assumption that the state's Medicaid expansion is approved. Moreover, several public comments on the application submitted to the state cite a prior 1332 waiver application the Idaho Department of Insurance released for public comment on November 3, 2017 to show that the federal cost of providing the Exchange subsidies substantially exceeds the federal cost of Medicaid, which suggests that the 1332 waiver would not meet the deficit neutrality requirement in this scenario.

⁴ Idaho Senate Bill 1204 (2019), available online <https://legislature.idaho.gov/sessioninfo/2019/legislation/S1204/>

⁵ That is, members of the group specified in section 1902(a)(10)(A)(i)(VIII) of the Social Security Act.

⁶ Idaho Section 1332 Waiver Application – Coverage Choice, pg. 4 FN 1.

⁷ Conversely, if the state instead assumed (consistently, in the without waiver baseline and with waiver scenarios) that Idaho's Medicaid expansion plan was not approved, individuals with incomes between 100% and 133% of the FPL would be eligible for the PTC and CSRs but not Medicaid. Under this assumption, Idaho's proposed waiver of section 36B of the Internal Revenue Code would have no effect. An application waiving the relevant eligibility criteria in section 36B but, assuming that Medicaid is not expanded, would not provide a rationale for waiving section 36B as required by 45 CFR 155.1308(f)(3)(iii) and 31 CFR 33.108(f)(3)(iii), and would therefore be incomplete. Such an application also would not provide a "comprehensive description of a program to implement a plan meeting the requirements for a waiver" as required by section 1332(A)(1)(B)(i) of the PPACA, and could not be approved by the Departments.

Any section 1332 waiver application that would increase the federal deficit cannot be approved by the federal government.

As such, the Departments have completed a preliminary review of Idaho's application in accordance with 45 CFR 155.1308(c) and 31 CFR 33.108(c) and we have determined that Idaho's application does not meet all of the requirements and is incomplete under 45 CFR 155.1308(f) and 31 CFR 33.108(f). Idaho's 1332 waiver application does not include information sufficient to determine if the coverage, affordability, comprehensiveness, and deficit neutrality requirements (also referred to as "guardrails") described in 45 CFR 155.1308(f)(3)(iv)(A) – (D) and 31 CFR 33.108(f)(3)(iv)(A)-(D) can be met. Without using appropriate assumptions, the application does not provide sufficient information to isolate and evaluate the effect of the waiver.

We look forward to working with you in the future on ways to provide residents of Idaho with access to affordable health care coverage. Please do not hesitate to contact us if you have any questions about our determination regarding your current application or 1332 waiver requirements applicable to any future application.

Sincerely,

A handwritten signature in blue ink, appearing to read "Randy Pate". The signature is fluid and cursive, with a large initial "R" and "P".

Randy Pate
Director, Center for Consumer Information & Insurance Oversight
Deputy Administrator, Centers for Medicare & Medicaid Services

Cc: David Kautter, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
The Honorable Brad Little, Governor, State of Idaho
Pat Kelly, Executive Director, Your Health Idaho