



750 9<sup>th</sup> Street, N.W.  
Washington, D.C. 20001  
[www.bcbs.com](http://www.bcbs.com)

February 2, 2026

Commissioner Marie Grant, Chair  
Amy Hoyt, Vice Chair  
Health Innovations (B) Working Group  
National Association of Insurance Commissioners  
1101 K Street N.W., Suite 650  
Washington, DC 20005

Submitted via email to Joe Tuschner at [jtuschner@naic.org](mailto:jtuschner@naic.org)

**RE: NAIC State Flexibility White Paper Draft**

Dear Commissioner Grant:

The Blue Cross Blue Shield Association (BCBSA) appreciates the opportunity to review the draft State Flexibility White Paper produced by the National Association of Insurance Commissioners (NAIC) Health Innovations (B) Working Group. We continue to support NAIC's efforts to provide a comprehensive analysis of state flexibility provisions under the Affordable Care Act (ACA), specifically Section 1331 of the ACA establishing the Basic Health Program (section 1331), Section 1332 establishing State Innovation Waivers (Section 1332), and Section 1333 establishing Health Care Choice Compacts (Section 1333).

BCBSA is a national federation of 33 independent, community-based and locally operated BCBS companies (Plans) that collectively cover, serve and support 1 in 3 Americans in every ZIP code across all 50 states and Puerto Rico. BCBS Plans contract with 96% of hospitals and 95% of doctors across the country and serve those who are covered through Medicare, Medicaid, an employer, or purchase coverage on their own. BCBSA has long advocated for commonsense solutions to ensure a robust, competitive private marketplace that offers individuals a broad range of choices to meet their needs at the best possible price. We appreciate the NAIC's efforts to support a stable regulatory framework that promotes competitive markets and enhances consumers' access to affordable coverage.

BCBSA supports state flexibility to explore innovative approaches to expand access to affordable coverage under the ACA, and in particular, through Sections 1331, 1332, and 1333. We appreciate the NAIC's efforts to examine innovative coverage strategies and maintain a stable regulatory framework for consumers and states. These provisions offer important opportunities for states to develop innovative coverage strategies that address local needs while maintaining essential federal consumer protections.

The white paper will serve as an important vehicle helping states assess how best to leverage these tools to improve consumer choice, enhance market competition, and ensure the long-term sustainability of the individual market. BCBSA supports the thoughtful analysis of how these flexibilities may best be applied in a manner consistent with the ACA's statutory guardrails to help expand coverage, improve affordability, and foster state innovation while maintaining appropriate consumer protections.

BCBSA believes the current draft covers many essential aspects of state flexibility. However, we have identified key areas that could be strengthened to better support states in designing stable, consumer-focused markets. We provide the following recommendations to ensure the final paper provides states with a practical, forward-looking roadmap.

### **Emphasize the importance of ACA's statutory guardrails established for each program**

The statutory guardrails under Sections 1331, 1332, and 1333 are essential to ensuring that consumers purchasing in the individual market are protected and that federal dollars are effectively leveraged. We understand NAIC's perspective that these requirements, particularly when taken in combination, may appear to place limitations on the types of state-based innovations that can be pursued. BCBSA recognizes the tension noted by NAIC, where simultaneous goals of expanding coverage and improving affordability can create a challenge in meeting the statutory deficit neutrality requirement without additional state financial investment. However, we believe these guardrails provide an essential roadmap for successful reform. They serve as a baseline for evaluating state flexibility initiatives, ensuring that innovation does not come at the expense of consumer protection or market stability.

The strength of Sections 1331, 1332, and 1333 lies in the clarity and stability of the statutory guardrails incorporated into each program. While the specific requirements vary by program, in each case these guardrails ensure that state flexibility maintains meaningful access to care. Consistency in interpretation and enforcement allows stakeholders to plan effectively, which is crucial for maintaining a robust market. In particular, clear and consistent guardrails provide the predictability necessary for insurers to participate in new state models.

BCBSA believes that the statutory requirements for these guardrails are clear; their regulatory implementation should remain stable over time. This ensures transparency and fairness, strengthening confidence that state waiver programs will deliver reliable coverage. While we support giving states flexibility to design local solutions, we strongly support maintaining statutory guardrails as a floor for such innovation. We encourage a regulatory approach that views these guardrails not as barriers, but as a standard of quality that all state innovations must meet to ensure they are beneficial for consumers.

Therefore, we suggest reframing this section to emphasize the guardrails' role in ensuring long-term program sustainability and affordability, rather than focusing on them as limitations.

### **Support clarifying federal rules for Section 1333**

Clear regulatory guidance is needed before states can effectively evaluate the potential for Section 1333 compacts to address the needs of their local markets. We would encourage NAIC

to identify those legal and operational areas where clarity is most needed, the provisions that are needed in a compact agreement to ensure the ACA's consumer protections will be maintained, and the operational considerations needed to address cross-state plan administration challenges. As BCBSA has communicated in our previous outline comments, establishing clear regulatory guidelines is essential to providing the necessary certainty for these compacts to function.

BCBSA strongly supports NAIC's statement that state regulators must retain flexibility to respond to individual market characteristics that are best managed at the state level. However, we believe that clear federal regulatory guidance, particularly regarding the application process, public notice, and timeline requirements, is not an impediment to this flexibility, but rather a prerequisite for states to utilize it effectively.

Section 1333 allows states the option to enter Health Care Choice Compacts to sell Qualified Health Plans across state lines. While this offers the potential for new program flexibility and expanded consumer choice, to date, no state has pursued a Section 1333 compact because, without defined rules, they cannot effectively evaluate the risks and benefits. To lower these barriers, CMS should provide a clear regulatory framework for these state compacts. This framework should emphasize that while states retain primary authority to regulate their own insurance markets, CMS must clarify how existing standards such as market conduct, network adequacy, and consumer protection standards, are maintained across state lines. CMS should clarify that the ACA's federal safeguards, including protections for people with pre-existing conditions, guaranteed issue requirements, and rating rules apply to coverage issued under a Section 1333 compact. CMS guidance should clarify operational issues that cross state lines, such as how premiums are applied, solvency oversight, benefit requirements, and grievance processes. Addressing federal clarity is essential for this section of the white paper to be actionable for states.

### **Promote the success of Section 1332 state-based reinsurance programs**

BCBSA supports the emphasis of the paper on Section 1332 reinsurance waivers as a proven, effective tool for stabilizing individual markets. By lowering premiums and encouraging carrier participation, these programs provide a sustainable mechanism for improving affordability without compromising ACA's core consumer protections. States that have implemented these waivers have seen success in curbing price hikes and improved access for residents. Giving states the flexibility to manage high-cost claims creates a healthier, more competitive insurance environment for everyone. Because of these results, expanding the use of these waivers remains a top priority for maintaining long-term market strength.

### **Advocate for uniform reporting standards**

While the white paper provides a comprehensive overview of the design and implementation of state flexibility programs, we note that it does not address post-implementation evaluation. BCBSA believes that for these waiver programs to be truly successful, they must be measurable. Establishing clear, uniform reporting requirements is critical to ensure that data on

enrollment, affordability, market impact, and consumer outcomes is consistent, transparent, and comparable across states.

Currently, reporting standards vary widely, limiting the ability of policymakers and stakeholders to assess true program performance. BCBSA recommends the NAIC advocate for a standardized set of metrics, reporting formats, and timelines. This approach would verify that state innovations are advancing ACA objectives while safeguarding federal investments.

### **Provide ongoing oversight**

Evaluation must extend beyond data collection to compliance monitoring. Waiver programs should be evaluated against statutory guardrails not just at the point of initial approval, but on an ongoing basis throughout operations. This means that comprehensiveness, affordability, coverage, and deficit neutrality are maintained using transparent spending and enrollment data. Oversight should confirm that the program continues to deliver comprehensive benefits and consumer protections. BCBSA believes that periodic reassessment with clear authority for CMS to require corrective actions when guardrails are unmet is essential to build trust in the waiver process and prevent market disruptions as conditions evolve.

We appreciate your consideration of our comments. If you have any questions or want additional information, please contact Randi Chapman at [randi.chapman@bcbsa.com](mailto:randi.chapman@bcbsa.com).

Sincerely,

A handwritten signature in black ink that reads "Clay S. McClure". The signature is written in a cursive style with a large, stylized "C" and "M".

Clay S. McClure  
Senior Director, State Affairs

Blue Cross Blue Shield Association