



Immigrant Health Coverage Expansions: Data Privacy Overview

Washington Healthplanfinder/Exchange Data

October 20, 2023

Today's Topics – Washington Healthplanfinder/Exchange Data Privacy

I. 1332 Waiver: Privacy Consolidations & Community Feedback

II. Privacy Program Overview

III. Immigrant Health Coverage Specifics

IV. Questions/Discussion

Washington Health Benefit Exchange

Expanding Coverage: Washington State's 1332 Waiver

- The state of Washington has been a leader in exploring innovative ways to increase access, improve quality, and reduce the number of Washington residents who lack coverage. On Dec. 9, 2022, Washington received federal approval for a first-in-kind Section 1332 State Innovation Waiver that will provide access to health and dental coverage through *Washington Healthplanfinder* to all Washington residents, regardless of immigration status starting in 2024.
- This waiver, which is broadly supported across Washington state, will strengthen the individual market, improve health care affordability, and help advance health inequity. Approximately 25% of Washington's uninsured population cannot currently obtain coverage through *Washington Healthplanfinder* due to their immigration status.
- This waiver also provides access to Cascade Care Savings, a state funded premium assistance program for all *Washington Healthplanfinder* customers up to 250% of the federal poverty level — \$33,975 per year for an individual; \$57,575 for a three-person household. Current federal law restricts this population from getting federal subsidies.



Privacy Concerns/Government Mistrust

- Due to the history of government, public health and health care programs and policies that have harmed immigrant communities, people who are undocumented often do not feel safe sharing personal information and have a fear of interaction with government entities.
- Providing personal information to a government entity can create perceived or real risk of deportation.
- The former public charge rule that went into effect in 2020 further eroded trust and comfort about participating in government programs. Although the rule was rescinded in 2021, community fear remains.
- In response to these concerns, the Exchange has taken steps to further address how information is collected and stored, which will be discussed further.
- Knowing that new customers are more likely to seek out enrollment assistance from trusted and culturally responsive source in their own community, the Exchange has increased the funding provided to community-based assister organizations who work with impacted communities.

I. 1332 Waiver: Privacy Considerations & Community Feedback

Privacy considerations were top-of-mind when the 1332 waiver was being developed and submitted

- 2020 WAISN health access survey, and community listening sessions conducted by Health Equity for Immigrants Campaign, found that: “distrust of healthcare system and sharing information with government, including on health coverage applications, is a barrier to accessing care”.
- State and federal public comments received during 2022 waiver submittal process echoed these concerns.
- Listening sessions and landscape scans conducted by the Exchange and community-based implementation partners in 2022 and 2023 also noted mistrust of government and the need for trusted community partners to help address continued concerns.

Strengthening privacy protections were a key part of state negotiations with CMS and Treasury/IRS during the 1332 waiver approval process

- Strong, first-in-kind, privacy language in federal 1332 approval/contractual documents
- Updated federal (CMS and IRS) reporting requirements will exclude identifying information for newly eligible population

In addition to negotiated federal safeguards, the Exchange has also taken steps to further protect data on the newly eligible population

- *NEW* Immigrant Health Coverage Data Policy
- System readiness – conducted end-to-end *Washington Healthplanfinder* assessments and implemented system updates to further minimize data transfer to government and issuer systems
- Improved on-screen messaging to customers about why data is collected and how it is used.

II. Privacy Program Overview

- The Exchange is committed to maturing a robust privacy program



New FTE

Singular focus on privacy



Third Party Assessment

Contracted with a third-party vendor to assess privacy compliance with the several applicable Privacy frameworks



Prioritized Recommendations

Socialized third party recommendations across the organization



Move to People Centric Privacy

Moving towards a program that is easily understood and usable by staff while maintaining compliance

II. Privacy Program Overview

- Exchange data is subject to extensive federal privacy regulations and state oversight
 - ✓ MARS-E, version 2.2
 - ✓ IRS Pub 1075
 - ✓ NIST Privacy Framework & NIST SP 800-53
 - ✓ Affordable Care Act Section 1411(g), including implementing regulations at 45 CFR 155.260
 - ✓ US Privacy Act
 - ✓ Washington Privacy Framework, including Keep Washington Working framework

III. Immigrant Health Coverage Specifics

- Specific provisions help protect newly eligible population:
 - US Immigration and Customs Enforcement Memorandum
 - For Federal and State Based Exchanges' applicant immigration information, 2013 memorandum clarifies that applicant information can't be used for immigration enforcement purposes, regardless of source of information. See *Clarification of Existing Practices Related to Certain Health Care Information*.
 - ***NEW*** Section 1332 Waiver's Immigration Status Protection
 - Washington's Section 1332 Waiver Approval Letter/State Terms and Conditions (STCs) – (1) limits the sharing of any additional information or data on persons newly eligible for Exchange coverage under the waiver to aggregate data, (2) notes that any information that is shared will be used **only** for waiver oversight purposes and will not be used for immigration enforcement.
 - ***NEW*** Immigrant Health Coverage Data Policy
 - Exchange policy that establishes additional protections for immigrant health coverage program data

***NEW* Immigrant Health Coverage Data Policy: Details**

Internal Exchange policy identifies and implements limitations and protections for immigrant health coverage program data, including the following:

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- (1) Any information or data on persons eligible for Exchange coverage under the IHC Program shall be given an elevated level of protection, similar to the level provided for Federal Tax Information (FTI).

 - (2) Whenever possible, the Exchange shall limit the information collected, stored, or retained about a person's immigration or citizenship status.

 - (3) If an individual attests to being an IHC applicant by not including a social security number and answering "no" to whether they are a citizen, national or lawfully present, no data about the applicant will be transmitted to the Federal Hub.

 - (4) The Privacy Manager is designated to review any ad hoc requests for reports based on or containing citizenship and/or immigration status information.

 - (5) The Exchange and its staff shall not disclose any personal identifiable information (PII) or information on types of benefits received to federal immigration authorities.

 - (6) Absent a separate legal requirement, the Exchange and its staff shall not share citizenship or immigration information with any person or entity, including federal immigration authorities.

 - (7) Access by federal immigration officers to the Exchange's systems or physical facilities is prohibited. Exchange's systems include any Exchange-issued computers regardless of where they are located.

 - (8) Any subpoenas and/or warrants from federal immigration authorities require consultation with the Exchange's attorney prior to any action being taken by Exchange staff.

Additional Negotiated Federal Protections

CMS Policy Based Payments Monthly Reporting

- No personal identifying information for the waiver population will be transmitted to CMS in the monthly policy-based payments reporting (i.e., SBMI). Identifying data elements will be masked for any enrollment that is not receiving advanced premium tax credits.

IRS Monthly and Annual Reporting

- Per the state's 1332 Specific Terms and Conditions (STCs) and 1332 Waiver Operational Report, the Exchange received permission to modify certain elements of information reporting to the IRS as the IRS deems necessary to administer the waiver.
- These modifications include changes to monthly and annual reporting on IRS Form 1095-A (both electronic reporting to the IRS and copies furnished to individuals) to exclude information related to enrollees who are newly eligible for Exchange coverage under the waiver.

**** Recent system updates to implement these protections ensure no PII for the newly eligible population will be reported from the Exchange to federal agency partners****

Exchange Driven Enhancements To Reduce Enrollment Barriers And Further Safeguard Data

- In anticipation of the upcoming coverage expansions, the Exchange conducted an end-to-end review of *Healthplanfinder* (focus on identity proofing process and PII transfer related to immigration status)
 - Steps
 - Reviewed all system integrations with federal partners and insurance carriers
 - Met with State Partners (DOL, DSHS, DOR, ESD, Governors Office) to discuss experience and lessons learned
 - Met with Call Center, Navigators and Brokers to discuss experience processing applications for people who are undocumented
 - Met with other state-based marketplaces to discuss experience and lessons learned from prior expansions
 - Main Findings
 - Inconsistencies regarding input of multiple names and hyphenated names can cause downstream barriers
 - Opportunities to improve HPF questions related to SSN and Lawful Presence
 - Opportunities to streamline electronic identity proofing process (e.g., Experian call) for waiver population (those without an SSN, who indicate they are not Citizen and not Lawfully Present)
 - Opportunities to expand documents used to manually verify identity (for those who need to, will include the waiver population) and permit in-person identity proofing procedure that does not require documents to be uploaded.
 - Need for clear, internal data policies/procedures related to new waiver population data

Exchange Driven Enhancements To Reduce Enrollment Barriers And Further Safeguard Data

- Outcomes
 - Updated Exchange policies and procedures, including:
 - Developed new internal data policy
 - Updated standards for entering names into *Healthplanfinder*
 - Expanded list of acceptable documents to prove identity (consistent with DOL)
 - Created procedure for in-person identity proofing (no uploading of documents needed)
 - Created procedure for accepting third-party affidavit of identity or certification of identity from other state or federal program (so no documents not a barrier).
 - Implemented system changes to minimize data transfer and improve enrollment experience, including:
 - Made back-end database updates needed to support new data policy
 - Made updates to on-screen SSN-related questions (proposed changes to Lawful Presence question being discussed with HCA)
 - Made system updates to ensure no data sent to federal hub for waiver population (no SSN entered, and select "no" to citizenship and lawful presence questions)
 - Updated system remove PII for waiver population from federal 1095A or SBMI reporting files

Questions?

