

# Thinking Ahead: 1332 State Innovation Waivers

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## **State Health Reform Assistance Network** Charting the Road to Coverage

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# Agenda

- **Key Elements**
- **Waiver Application Process**
- **Possible Waivers**
- **Discussion**

# Key Elements

# Overview of Section 1332 Waivers

**States may request waivers from HHS and the Treasury Department of certain requirements of the Affordable Care Act (ACA)**

- State innovation waivers are the progeny of bipartisan pre-ACA proposals to give states flexibility to be laboratories of health policy.
- Waiver proponents across ideological spectrum view section 1332 as vehicle for diverse system-wide changes.
- While broad reforms are possible, section 1332 can also be used to smooth jagged edges of ACA through narrowly targeted waivers.
- Use of section 1332 will vary, reflecting differing state needs and goals.
- Waivers must preserve coverage and fiscal parameters of ACA.



## ***Timing and Effective Date***

1332 waivers cannot take effect before January 1, 2017, but states will need to engage if to implement in 2017.



## ***Federal Funding***

States are entitled to the subsidies their residents would have received if state proposes to waive subsidies and use funds for other purposes.

ACA § 1332(a)(3)

# Four Areas of Innovation

States may propose innovations and alternatives to four pillars of the ACA

## 1 *Individual Mandate*

States can modify or eliminate the tax penalties that the ACA imposes on individuals who fail to maintain health coverage.

## 2 *Employer Mandate*

States can modify or eliminate the penalties that the ACA imposes on large employers who fail to offer affordable coverage to their full-time employees.

## 3 *Benefits and Subsidies*

States can modify the rules governing what benefits and subsidies must be provided within the constraints of section 1332's coverage requirements.

## 4 *Exchanges and QHPs*

States can modify or eliminate QHP certification and the Exchanges as the vehicle for determining eligibility for subsidies and enrolling consumers in coverage.

# Four Guardrails for Waiver Approval

A state waiver application must satisfy four criteria to be granted

## 1 *Scope of Coverage*

The waiver must provide coverage to at least as many people as the ACA would provide without the waiver.

## 2 *Comprehensive Coverage*

The waiver must provide coverage that is at least as “comprehensive” as coverage offered through the Exchange. Whether coverage is as comprehensive as Exchange coverage must be certified by the CMS chief actuary based on data from the state and comparable states.

## 3 *Affordability*

The waiver must provide “coverage and cost sharing protections against excessive out-of-pocket” spending that is at least as “affordable” as Exchange coverage.

## 4 *Federal Deficit*

The waiver must not increase the federal deficit.

ACA § 1332(b)(1)

# Coordination with Other Waivers

Section 1332 waivers can be coordinated with Medicaid and Medicare waivers, which may create opportunities for states to address differences among these federal programs that may impede efforts to pursue multi-payer delivery system reform.

## **1332 Waiver**

ACA requires that HHS and Treasury coordinate their review of section 1332 waivers with existing waiver authority under federal law.

## **1115 Waiver - Medicaid**

HHS may waive Medicaid requirements if doing so is “likely to assist in promoting the objectives” of the Medicaid statute.

## **Medicare waivers**

HHS is permitted to modify Medicare payment to test methods to improve efficiency of the Medicare program.

## **Key Points**

Section 1332 does not expand waiver authority for Medicaid or Medicare.

- State Exchanges can diverge from the federal model even without a waiver.
- Many innovations can be implemented without a waiver!
- Reforms that do not require a waiver:
  - Tie QHP certification to quality targets or payment reform
  - Eliminate bronze or platinum plans
  - Add state subsidies
  - Merge markets (individual, small group, large group)
  - Modify essential health benefits benchmark

# Lessons from 1115 Medicaid Waivers

**1115 waivers must be “budget neutral” while 1332 waivers may not increase the federal deficit. Appears to be the same standard as a practical matter**

For section 1115 waivers, the state must demonstrate that the anticipated trend in Medicaid spending with a waiver will be the same or less than the trend without a waiver.

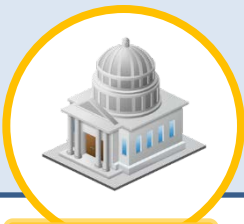
## ***Budget Neutrality Review***

- HHS and the Office of Management and Budget (OMB) must agree the 1115 waiver is budget neutral. HHS will review section 1332 waivers and OMB is likely to review as well.
- It is unclear whether the coordinated HHS review of section 1332 with other waivers means HHS will evaluate budget neutrality jointly for the 1115 and 1332 waivers or whether each waiver must independently demonstrate neutrality.



# Waiver Application

# Steps in Waiver Process



## State

- Consider state goals and determine if 1332 waiver is desirable
- Have sufficient state authority to implement the waiver
- Draft waiver application
- Hold pre-application hearing
- Include in waiver application:
  - Actuarial/economic analyses
  - Implementation timeline
  - Ten-year budget plan



## HHS and Treasury

- Deem the waiver application complete
- Conduct federal notice and comment period
- Review the application within 180 days of determining it is complete
- Approve or reject the waiver application



## Implementation

- Waivers implemented in 2017 or later
- Quarterly and annual reports submitted to Treasury and HHS
- Waiver renewals begin no later than 2022 because the term of waiver may not exceed five years



There is no deadline for submitting a waiver application and states may submit prior to 2017

# State Authority



**Section 1332 specifically requires that a state have authority under state law to submit a waiver request**



**States may use preexisting law that grants state authority**

**The authority must cover application submission and implementation**

ACA § 1332(a)(1)(C), (b)(2)(A)

# Comparison of 1332 and 1115 Public Input Rules

## *Steps of 1332 Public Input*

- 1** Public hearing at state level after drafting waiver
- 2** Federal public notice and comment process after application submission
- 3** Annual state public forums on the waiver after approval

## *Steps of 1115 Public Input*

- 1** Tribal consultation process (60 days prior to submission)
- 2** State public notice process including two public hearings (30 days prior to submission)
- 3** Federal public notice and comment process (30 days after waiver submission)

# Possible Waivers

# Waiving the Individual Mandate: Considerations

States can waive or modify the individual mandate, which imposes escalating tax penalties on individuals who fail to purchase qualifying health coverage and do not qualify for an exemption.

## Coverage Guardrails

- Absent effective replacement, repeal of individual mandate will reduce number of people covered
- Should not impact cost sharing provisions (but may drive up premiums)
- Should not impact comprehensiveness of coverage

## Fiscal Guardrails

- Waiving the mandate, by itself, will reduce costs because fewer people will enroll in coverage.
- But a successful waiver requires that at least as many people be covered, so ultimately fiscal impact will depend on how that is accomplished.

# Approaches to Waiving Individual Mandate



## Revisions to Individual Mandate

- Expand or narrow exemptions
- Increase or decrease penalties

## Replacements for Individual Mandate

- Implement late enrollment penalty (like Medicare)
- Reduce opportunities for open enrollment
- Make coverage more affordable (see benefit waivers)

# Waiving the Employer Mandate: Considerations

States can waive or modify the employer mandate, which imposes penalties on employers with 50 or more full-time employees that do not provide affordable coverage to full-time employees.

## Coverage Guardrails

- Should have minimal impact on number of people covered
- Will not impact affordability
- Will not impact comprehensiveness of coverage

## Fiscal Guardrails

- Waiver of employer mandate, by itself, will reduce penalty revenue to the federal government.
- States will have to find alternative revenue or cost-cutting provisions to achieve budget neutrality



# Approaches to Waiving Employer Mandate



## Revisions to Employer Mandate

- Exempt mid-sized employers (50-200 employees)
- Raise or lower bar for qualifying coverage
- Change definition of covered employees

## Broader Waivers

- “Play or pay” mandate requiring flat percentage of payroll to be paid in benefits or taxes
- Eliminate employer mandate (requires pay for)

# Benefit and Subsidy Waivers: Overview

States may waive or modify ACA requirements relating to Essential Health Benefits (EHBs), Premium Tax Credits, and Cost Sharing Reductions (CSRs).

## Coverage Guardrails

Benefit and subsidy changes will impact multiple guardrails, potentially requiring offsets to achieve budget neutrality:

- Adding skinnier plans may increase enrollment but will decrease comprehensiveness of coverage
- Enhancing CSRs will increase affordability of coverage and may increase enrollment, but will require offsets
- New benefit mandates will increase comprehensiveness of coverage, but may decrease affordability and will require offsets

## Fiscal Guardrails

Benefit or subsidy changes will often have a negative fiscal impact that must be offset or create a surplus that could be used elsewhere in the waiver package.

U.S. Code § 36B  
ACA §§ 1301-1304, 1402

# Approaches to Waiving Benefit and Subsidy Provisions



## Revisions to Benefits and Subsidies

- Smooth out cost sharing cliffs
- Adjust tax credits based on quality metrics
- Add copper plans or ancillary benefits
- Shorten grace periods

## Broader Waivers

- Smooth differences between Medicaid and Exchange (continuous enrollment in Exchange, premiums in Medicaid through 1115 waiver)
- Expand or contract subsidy eligibility (e.g., eliminate family glitch or cap subsidies at 300% FPL)
- Create alternative benefit and/or subsidy system

How will HHS handle waivers that impact provisions of federal law that are not explicitly waivable under section 1332 (e.g., open enrollment periods outside Exchange)?



# Exchange and QHP Waivers: Overview

States may waive or modify ACA requirements related to QHP certification and Exchanges as the vehicle for ensuring that ACA benefits and subsidies are delivered to consumers.

## Coverage Guardrails

Exchange and QHP waivers may not impact coverage, especially if they are operationally-oriented to enhance efficiency.

## Fiscal Guardrails

Exchange and QHP waivers may be fiscally neutral, especially if they are operationally-oriented to enhance efficiency.

Exchange-related waivers will likely require states to have a state-based exchange, at least in 2017 when the federal exchange is still focused on achieving basic functionality and is not very flexible or adaptable to state variations. The same point applies to a lesser degree to QHP-related waivers.

# Approaches to Waiving Exchange and QHP Provisions



## Revisions to Exchange and QHP Requirements

- Eliminate specific Exchange or QHP requirements
- Cap small group market at 50 employees

## Broader Waivers

- Replace QHP certification with state-based regulation
- Eliminate market outside Exchange for individuals and/or small groups
- Replace Marketplace with one or more private exchanges
- Allow all individuals (including subsidy-eligible) to purchase ACA-compliant coverage from any licensed insurer or agent

# First Movers: Hawaii



Hawaii

## Reasons for pursuing 1332 waiver

- Wants to preserve its ERISA-exempt employer mandate that dates back to 1974 and has reduced uninsured rate to less than 10%
- Views waiver as potential means to support improvement of health care system (delivery, payment, wellness), not just coverage
- Role of Exchange is part of debate
- Goal is universal coverage and access

## Work to Date

- 2014 legislation established State Innovation Waiver Task Force
- Task force includes state agency heads, insurers, community leaders
- Began public meetings in fall 2014
- Exploring all waivable provisions of ACA through working groups
- Aiming for legislative authorization and funding in 2015 to pursue 1332 waiver for 2017 or later

# First Movers: Vermont



Vermont

## Reasons for pursuing 1332 waiver

- Wants to establish a “universal and unified” single-payer healthcare system, Green Mountain Care (GMC)
- GMC would redirect ACA subsidies, supplemented by state funds, to provide a publicly-financed gold level benefit plan to state residents
- Medicaid and CHIP would be included with supplemental benefits as required by Medicaid and CHIP waivers
- Medicare benefits would remain same but “all payer” waiver would allow Medicare participation in delivery system reform

## Work to Date

2012 legislation required state to develop single payer plan and pursue 1332 waiver for 2017 implementation

Began meeting with CMS in early 2014

October 2014 concept paper describes goals, ACA provisions to be waived, and approach to meeting coverage and fiscal guardrails

Working on model to define federal funding and required state financing

Goal is to have final proposal by early 2014 and began public input process

# Discussion



# Thank you!

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