

# **State Health Reform Assistance Network**

## Charting the Road to Coverage

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# **1332 State Innovation Waivers: HHS and Treasury Guidance on 1332 Waivers**

**Manatt Health Solutions**  
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# Agenda

- **Basics of 1332 Waivers and Guidance**
- **Guardrails as Defined in HHS/IRS Guidance**
- **Potentially Approvable Waivers**

# Basics of 1332 Waivers and Guidance

# Review of the Basics: What Can be Waived?

Section 1332 authorizes waivers of four components of the Affordable Care Act

## 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 may modify the rules governing covered benefits and subsidies. States that reallocate premium tax credits and cost-sharing reductions may receive the aggregate value of those subsidies for alternative approaches.

## 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.

# What Guardrails Apply to Waivers ?

The December 15<sup>th</sup> guidance establishes standards for applying the guardrails

## 1 *Scope of Coverage*

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

## 2 *Federal Deficit*

The waiver must not increase the federal deficit.

## 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 *Comprehensive Coverage*

The waiver must provide coverage that is at least as “comprehensive” as coverage offered through the Exchange.

# State Innovation Waiver Guidance

## Regulations

- HHS and IRS joint regulation on application development and submission procedures for 1332 waivers

February 2012

December  
2015

## Guidance

- HHS and IRS joint guidance on how the Departments intend to interpret the statutory conditions for granting a waiver when they review applications
- Future administrations could revise this guidance
- Departments are seeking comment but are under no obligation to respond to the comments or revise the guidance



# Guardrails as Defined in HHS/IRS Guidance

# Standards Applicable to All Guardrails

HHS and Treasury will review whether the proposed waiver meets each of the guardrails with respect to:



- Impact on all state residents, regardless of type of coverage (Marketplace, employer, Medicaid, etc.), holding the state's Medicaid policies constant
- Vulnerable populations, such as the poor, elderly, and chronically ill
  - Include analysis and supporting data on the number of individuals covered by income, health status, and age, with and without the waiver
- Each year of the waiver

# Coverage Guardrail

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

## New Guidance

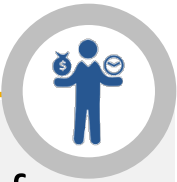


- The same number of state residents (or more) must be “forecast” to have coverage under the waiver as would have coverage absent the waiver
- Coverage refers to Minimum Essential Coverage
- Analysis considers whether waiver sufficiently prevents gaps in coverage

# Affordability Guardrail

Waiver must provide coverage and cost sharing protections so that coverage is as least as “affordable” as Exchange coverage

## New Guidance



- Coverage under the waiver must be forecast to be as affordable overall for state residents as coverage absent the waiver
- Compare residents’ net out-of-pocket spending for premium and cost-sharing to their income, with and without the waiver
- Must not increase number of residents with large health care spending burden
- Same number of residents must have access to coverage that provides a 60% actuarial value and the ACA required annual maximum out-of-pocket limit
- Consider changes in employer contributions to health coverage or wages

# Comprehensiveness Guardrail

The waiver must provide coverage that is at least as “comprehensive” as coverage offered through the Exchange

## New Guidance



- Coverage under the waiver must be forecast to be at least as comprehensive overall for residents of the state as coverage absent the waiver
- Coverage refers to scope of benefits provided, measured by:
  - All ten EHB categories
  - Each EHB category
  - Medicaid and CHIP benefits, holding Medicaid policies constant

# Deficit Guardrail

The waiver must not increase the federal deficit

## New Guidance



Projected federal spending net of revenues with waiver must be equal to or lower than spending net of federal revenues without waiver

- **Revenue:** considers changes in income, payroll, excise tax, or user fees
- **Spending:** considers changes in tax credits, CSR, and in Medicaid spending

Savings generated by other waivers, such as Medicaid 1115 waivers, do not count; savings to other federal programs generated by a 1332 waiver do count

Waiver must be budget neutral over a ten year budget period

Waivers not budget neutral in a given year are less likely to be approved

# Federal Pass-Through Funding

Amount of pass-through funding equals the financial assistance state residents would have claimed in the Exchange absent the waiver

## New Guidance



- Calculation of pass-through funding does not account for other changes in federal spending or revenues
  - Changes to federal administrative expenses are not considered here, but are considered in calculating deficit guardrail
- Estimates take into account experience in waiver state and in other similar states
- SBM states must provide information about enrollment, premiums and Exchange financial assistance

# Potentially Approvable Waivers



# Operational Limitations for States Pursuing a 1332 Waiver



- As HHS cannot customize HealthCare.gov in the immediate future, states relying on HealthCare.gov cannot implement certain waivers that may otherwise be approvable (such as state add-ons beyond core eligibility system)
- State could propose a waiver that does not rely on an exchange-like platform

- Treasury says IRS cannot modify tax administration on a state-by-state basis
- State could choose to waive an entire provision, such as eliminating premium tax credits, and use the money for state-administered subsidy

# Targeted Waivers

## Massachusetts



- Moving forward with a limited scope waiver in beginning of 2016
- Waiver seeks to preserve small group rules related to their pre-ACA merger of individual and small group markets
- Considering a second broader waiver in 2017
- New guidance presents concerns with what flexibility there is to calibrate the financial analysis to the scope of the waiver

## Hawaii



- Updating waiver previously posted on state website based on new guidance
- Waiver seeks to maintain the Hawaii Prepaid Health Care Act, the state's unique 40-year-old employer mandate, which provides broader employer coverage than the ACA
- Hawaii has similar concerns as Massachusetts, related to calibrating their financial analysis to the scope of the waiver

Guidance allows for shortened comment period for waivers that are simple to allow states to quickly fix targeted issues

# Consumer Assistance Waivers

State Based Marketplaces, State Based Marketplaces using the HealthCare.gov platform, and State Partnership Marketplaces may tailor consumer assistance approaches to their state through a waiver



**Assisters, Navigators, & Certified Application Counselors:** States could choose to waive requirements on establishing assister, navigator, and certified application counselors or make targeted fixes to funding and training requirements



**Agents, Brokers & Issuers:** States could remove conflict of interest rules to have insurers, agents, and brokers responsible for full eligibility and enrollment process, greatly reducing the role of the Exchange



**Call Center:** SBMs relying on HealthCare.gov may want to waive the ACA requirement for their Marketplace to retain a call center independent of HealthCare.gov's.

# 1332 and 1115 Budget Neutrality

- If a state saves money through a Medicaid 1115 waiver and proposes a 1332 waiver which costs money, the 1115 savings may not be attributed to the 1332 waiver
- Budget neutrality under Medicaid 1115 waiver only considers savings and costs to the Medicaid program. Unlike 1332, this policy is neither in regulation or guidance.
- When assessing budget neutrality for 1332 waivers a state may consider whether the proposal affects federal spending for Medicaid or Medicare, and count those savings in 1332 budget neutrality estimates

## Example

- Medicaid expansion state seeks to provide the choice for individuals from 100 – 138% to enroll in QHP with APTC to increase Exchange number of lives for sustainability purposes
- Utilizes 1332 waiver to allow 100-138% FPL population to receive APTC despite offer of Medicaid
- State should be able to use savings from Medicaid program (less any funding for wrapping benefits) for 1332 budget neutrality
- State would need to meet all other guardrails (including affordability standards)

# Thinking Ahead

Consider state goals and policy priorities for 1332 waiver  
(timeline assumes state begins planning in January 2016)

Secure state authority  
Engage key stakeholders

Hold required pre-application hearings

Submit waiver application to HHS and Treasury

Application approved by HHS and Treasury

New federal Administration (potential for modified guidance)

Jan 2016

March 2016

April 2016

June 2016

January 2017

## Minnesota's Example

- **May 2015** – Legislature establishes “task force on health care financing” charged with, among other things, using 1332 waivers to improve continuum of coverage and delivery system reform
- **July 2015** – Conducted pre-launch interviews with elected officials, advocacy groups, government agencies, and health insurance plans to determine state priorities
- **August 2015** – Task Force first convened
- **January 2016** – Recommendations report due to Governor and Legislature
- **March/May 2016** – Legislature deliberates and passes statute on MN reforms and 1332 authority
- **State may decide to submit a 1332 waiver or use other tools to achieve state goals**

To prepare for next Administration in 2017, States should start planning how to use 1332 waivers for restructuring coverage paradigm today

# Open Possibilities for 2017

**Guidance is likely to change in 2017, regardless of outcome of 2016 election**



# Discussion





# Next Steps

Webinar Topic	Date
1332 State Innovation Waivers: What's Next for States	4/20/15
1332 State Innovation Waivers: What Can be Waived?	5/29/15
1332 State Innovation Waivers: Getting off the Ground	7/13/15
1332 State Innovation Waivers: Coordinating 1332 and 1115 Waivers	8/24/15
1332 State Innovation Waivers: Issues Related to Coordinated Waivers	10/06/15
1332 State Innovation Waivers: Lessons Learned from the Basic Health Program	11/18/15
1332 State Innovation Waivers: HHS and Treasury Guidance on State Innovation Waivers	Today
<b><u>TBD</u></b>	February (TBD)



# Thank you!

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