Innovation Waivers: the Next Wave of State Coverage Reform?

National Conference of State Legislatures
Innovations in State Health System Task Force
August 3, 2015

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Overview

- 1332 basics
  - What can be waived
  - Funding
  - Limitations
- Role of the legislature
- Timing
- Options and considerations for States
- Additional resources
1332 waiver basics

• States may request that HHS and Treasury exempt them from certain requirements of the ACA
• States can aim for broad system-wide reforms or simply use narrow waivers to smooth rough edges of the law
• Use of 1332 waivers will vary according to local needs and goals
• Waivers must preserve coverage and fiscal parameters of ACA
What can be waived

• The individual mandate
• The employer mandate
• Benefits and subsidies
• Marketplaces and qualified health plans
Funding

• States can receive the aggregate amount of federal funds that otherwise would have gone to tax credits and cost-sharing reductions

• Unlike with exchange development, there are no federal grants available to plan for 1332-waiver based reforms
Limitations of 1332 waivers

- Four guardrails state requests must stay within:
  - Comprehensiveness
  - Affordability
  - Scope
  - Budget neutrality
Other limitations

• Section 1332 does not expand waiver authority for Medicaid or Medicare
  • Though states can coordinate waivers across those programs
• States that rely on healthcare.gov will be more limited in what they can do under 1332
• Unclear whether can apply savings from one waiver to another (such as with a Medicaid waiver and a 1332)
• Unclear how HHS will determine budget neutrality
  • An issue especially in non-Medicaid expansion states
Role of the legislature

• State legislatures are key part of 1332 process
• Legislative authorization is required
• Current list of states with new legislative authorization to pursue a 1332 waiver:
  • Hawaii
  • Minnesota
  • Rhode Island
Role of the legislature

- Other states that have taken action on 1332s:
  - New Mexico
    - Office of the Superintendent of Insurance created a task force to study opportunities under a 1332
  - Arkansas
    - Detailed report prepared for the Arkansas Health Insurance Marketplace Board and Legislative Oversight Committee
    - 1332 waivers under consideration at the Arkansas Health Reform Legislative Task Force
Timing

• Waivers can take effect as early as January 1, 2017

• Clock is ticking! Application process will take some time
  • Includes required public hearings and considerable analysis and documentation
  • Federal review and approval process could take six months

• Thus, important for legislature to weigh in early
Consider state goals and policy priorities for 1332 waiver

Secure state authority early in the process

Hold required pre-application hearing

Application approved by HHS and Treasury
Implementation Begins (if Year 1 falls after January 1, 2017)

Begin submitting annual reports

Begin submitting quarterly reports

This assumes a 6 month review & approval process by HHS & Treasury; some waivers may take considerably longer

Waiver is renewed
What states can do with a 1332

- Minnesota aim: smooth out the cost curve and build on the state’s Basic Health Plan; coordinate with SIM efforts?
- Hawaii aim: replace SHOP with direct enrollment with carriers
- Remove some irritants, including:
  - Different definition of American Indian across programs
  - Different enrollment effective dates across programs
  - Different ways of counting income
What states can do with a 1332

• Other options:
  • Eliminate the marketplace and replace with direct enrollment or private vendor infrastructure
  • Eliminate the individual mandate and replace with automatic enrollment or reduced opportunity for future enrollment
  • Reallocate subsidies to favor plans with higher quality ratings (as in Medicare Advantage)
  • Fix the family glitch, which makes coverage unaffordable for some families
Considerations for states

• What are your coverage and delivery system goals?
• What authority do you need to achieve those goals?
• Start work group and stakeholder discussions
• Plan for fiscal analysis
Resources

- **New CMS 1332 hub:**
  
  https://www.cms.gov/CCIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-.html

- **State Network resource library:**
  
  http://statenetwork.org/2015/06/24/1332-waivers-resource-library/
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