HEALTH CARE WAIVERS PART 2

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Special Thanks

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Health Care Waivers Part 2: Section 1332 Waivers

National Conference of State Legislators
August 4, 2016
Agenda: Section 1332 Waivers

1. A Review of the Basics
2. Possibilities for 1332 Waivers
3. State Activity
Key Questions in Determining Strategy Related to Any Waiver

Key Questions:

• What are the goals for my state?
• What program changes would enable those goals?
• What federal authorities enable the desired changes?
New waiver authority was created by the Affordable Care Act, and is effective January 1, 2017.

States may request waivers from HHS and the Treasury Department of certain provisions in the ACA.

A 1332 waiver is NOT a Medicaid waiver, but a state may develop a companion Medicaid waiver (typically an 1115 waiver) along side a 1332 waiver to achieve policy goals.
While a number of ACA provisions may be waived, states must follow federal guardrails.

Example: A state may wish to use a 1332 waiver to offer higher tax subsidies to make coverage more affordable.

But one of the “guardrails” is that the waiver must not increase the federal deficit.
1332 Waivers: What Can Be Waived?

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

**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.

**Benefits and Subsidies**
States may modify the rules governing covered benefits and subsidies.

**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.
Statutory Guardrails

States must satisfy four major criteria for a state waiver to be granted and may not waive guaranteed issue and related rating rules.

Key Application Components

a) **Scope of Coverage**: The waiver must provide coverage to at least as many people as the ACA would provide without the waiver.

b) **Comprehensive Coverage**: The waiver must provide coverage that is at least “as comprehensive” as coverage offered through the Exchange.

c) **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.

d) **Federal Deficit**: The waiver must not increase the federal deficit.

*The Obama Administration released stringent guidance in December 2015; this may change under new administration.*

Fair play rules

States may not waive non-discrimination provisions prohibiting carriers from denying coverage or increasing premiums based on medical history. States are precluded from waiving rules that guarantee equal access at fair prices for all enrollees.
Agenda: Section 1332 Waivers

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Possibilities for 1332 Waiver Use

1332 waivers provide a fairly open opportunity to states to innovate, subject to the statutory guardrails.

1 Far Reaching Policy Initiatives

Opportunity to alter the ACA coverage paradigm. *For example: changing subsidy structure*

2 Targeted Fixes

Opportunity to address specific ACA issues. *For example: aligning FPL standards across Medicaid and tax credits by adopting the Medicaid approach.*

3 State Specific Innovation

Opportunity to address each state’s unique healthcare landscape and market. *For example: weighting subsidies based on different rating areas’ average premium costs.*

4 Sustainability

Opportunity to create a more efficient and sustainable state based vehicle for consumers to access ACA tax credits. *For example: replacing the exchange with direct to issuer model.*
Current Marketplace Landscape

How states wish to and are able to use waivers may depend on how their marketplace is facilitated today, and where they are headed.

KEY
- State Based Marketplace (11 + DC)
- Federally Facilitated Marketplace (28)
- Supported SBM (4)
- Partnership (7)

As of December 2015
Coordinating 1332 and 1115 Waivers

Depending on the policy goals, states may leverage and coordinate 1115 and 1332 waivers to make changes to test innovative approaches in Medicaid (1115) or individual or small group insurance markets (1332).

- **Smoothing the Cost Continuum:** Improving premium and cost-sharing alignment across insurance affordability programs
- **Purchasing Alignment:** Creating a Medicaid premium assistance program, BHP-like program, or premium subsidy program
- **E&E Alignment:** More fully aligning eligibility and enrollment rules and processes across insurance affordability programs
New York has smoothed costs for individuals with incomes up to 150% FPL through a Basic Health Program (BHP). States may create similar programs, or programs that smooth at higher income breaks (250% or 400% of FPL) through 1332.

<table>
<thead>
<tr>
<th>Example: New York (2016)</th>
<th>Medicaid (138% FPL)</th>
<th>BHP (139-150% FPL)</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual premium</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Deductible</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Prescription drugs</td>
<td>$1 - $3</td>
<td>$1 - $3</td>
<td>$0</td>
</tr>
<tr>
<td>Specialty visit</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Inpatient hospital stay</td>
<td>$25</td>
<td>$0</td>
<td>($25)</td>
</tr>
<tr>
<td>Maximum out-of-pocket</td>
<td>$200</td>
<td>$200</td>
<td>$0</td>
</tr>
</tbody>
</table>
Example: Increasing Sustainability of the Marketplace

Go Lean on Operations
• Replace public exchange with direct to issuer model
• Public partnership with web-brokers
• Eliminate SHOP

Increase Covered Lives
• Medicaid Premium Assistance for QHPs
• Allow state employees to purchase QHPs.
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3. Example State Activity
Hawaii plans to preserve its pre-ACA employer mandate in place since 1974 (Hawai‘i Prepaid Health Care Act). The state’s mandate is more sweeping than the ACA’s and has been successful in reducing the state’s uninsured rate.

Massachusetts

The waiver proposes to preserve certain features of the Commonwealth's current small group market, which was merged with the individual market prior to the adoption of the Affordable Care Act in order to avoid the disruption associated with transitioning to a calendar year process.

Vermont proposes to eliminate the ACA requirement that small employers enroll through a Small Business Health Options Program (SHOP) web portal and instead preserve its current direct enrollment process, which allows small employers to enroll directly through insurers rather than through a state website.
## Other Examples of State 1332 Waiver Activity

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<thead>
<tr>
<th>State</th>
<th>Description</th>
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<tbody>
<tr>
<td><strong>Ohio</strong></td>
<td>passed legislation in 2015 authorizing the Superintendent of Insurance to submit a 1332 waiver application to the federal government to eliminate the employer and individual insurance mandate in the state and establish a system that provides state residents with access to affordable health insurance coverage.</td>
</tr>
<tr>
<td><strong>Minnesota</strong></td>
<td>created the Task Force on Health Care Financing to consider policy reforms in the state. The Task Force issued a report that includes a number of ideas the state could pursue via the 1332 waiver such as expanding access to dental coverage, addressing the family glitch, and implementing more graduated subsidies. Minnesota’s Legislature is considering a bill that would allow a “MinnesotaCare” product, designed and purchased by the State, to be sold on the Marketplace to individuals with incomes above 200% FPL; the proposal would allow those who are eligible for APTCs to use them to offset the cost of coverage.</td>
</tr>
<tr>
<td><strong>Rhode Island</strong></td>
<td>adopted legislation in 2015 that authorized the state to pursue cost effective strategies via 1332 waivers, including waivers that would allow the state exchange system to negotiate or purchase services from other partnering states.</td>
</tr>
</tbody>
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Questions?
Thank You!

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More Information

- Visit www.ncsl.org and search “waivers”

- Our report on State Legislation and Enacted Laws Related to 1332 Waivers has been updated through today.  

- Email health-info@ncsl.org

- Call 303-364-7700 and ask to speak with someone in the health program
Thank you!