1332 State Innovation Waiver

Webinar - January 26, 2016
3pm-4pm

Agenda

1. Introduction to the Waiver
   - What can be waived, what can't, and more

2. Recent Federal Guidance

3. Public Input Process

Introduction to State Innovation Waiver (1332)

The “1332 Waiver” allows states to pursue innovative strategies for providing residents with access to quality, affordable insurance while retaining the basic protections of the Affordable Care Act.

- No specific deadline; proposals can start on or after 1/1/17
- Proposals must not add to the U.S. Treasury’s 10 year deficit
- Requires authorizing state legislation
- The waiver is for 5 years

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

Source: Robert Woods Johnson Foundation

1332 Waiver: What **can** be waived

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.

- Slide from the State Health Reform Assistance Network and the Robert Woods Johnson Foundation

1332 Waiver: What **cannot** be waived

Many important components of the ACA (**subtitles A, B and C of Title I of the ACA**) aren't subject to section 1332, including:

Pre-Existing Conditions

Prohibitions against insurers denying coverage or charging higher premium rates to people with pre-existing health conditions

Annual & Lifetime Limits

The ban on annual and lifetime coverage limits in most plans

Dependent Coverage to 26

The requirement to Cover adult dependents up to age 26

Discrimination

Bars on discrimination against people based on health status, disability status, race, age, or sex

Rates on Old vs. Young

Cannot waive limitations on how much insurers in the individual and small-group markets can charge older people compared to younger people

Risk Adjustment Program

State's cannot waive the risk adjustment program, designed to protect insurers in the individual and small-group markets from financial harm if they attract enrollees with higher-than-average costs

* Slide from the State Health Reform Assistance Network

1332 Waiver: Guardrails

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.

* Slide from the State Health Reform Assistance Network

Recent Federal Guidance

In December 2015, HHS and IRS published joint guidance outlining how they will interpret the rules for approving an application for a 1332 waiver.

The guidance specifies that any waiver must result in:

- Health **coverage for at least as many** as would have had coverage under the ACA without a waiver
- Coverage and cost-sharing that is as **affordable** as would have otherwise been without a waiver
- Coverage that offers **benefits** that are at least as comprehensive
- **No additional costs** to the Federal government. Additionally, any savings from a Medicaid 1115 waiver cannot be counted towards the costs of a 1332 waiver.

The guidance specifies that the HHS and IRS will also consider a proposal's effect on **vulnerable groups**, including low-income residents. Additionally, the IRS cannot modify the administration of taxes or tax credits on a state-by-state basis, which means any modification to APTC must be **administered by the state**.

Public Input Process for the 1332 Waiver

Covered California is committed to engaging the public and stakeholders about potential 1332 waiver proposals.

February 23, 2016, 8:30 AM to 12:30 PM – A panel of speakers will be invited to present their ideas on possible waiver topics. The meeting will be open to the public and public comment will be welcome.

Afterwards, Covered California staff will research ideas and bring a recommendation to the Board of Directors.

Reminder – 1332 State Innovation Waiver proposals can take effect no sooner than January 1, 2017. The Federal review of a state's waiver application may take up to 6 months.

Appendix

Key Links:

- Most recent federal guidance on 1332 waiver - https://federalregister.gov/a/2015-31563
- Application, Review, and Reporting Process for Waivers for State Innovation Final Rules - https://www.gpo.gov/fdsys/pkg/FR-2012-02-27/pdf/2012-4395.pdf

Other waiver resources:

- RWJF - http://statenetwork.org/2016/01/17/1332-waivers-resource-library/

Questions or Comments?