PPACA Section 1332: Waiver for State Innovation

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The premise of federal Medicaid waivers is that states can be laboratories for health care policy innovation. Over the past several decades, states have seized on opportunities to waive portions of the Social Security Act to achieve different goals. For example, in lieu of traditional Medicaid expansion under the Patient Protection and Affordable Care Act (PPACA), Arkansas sought and was approved for a Section 1115 demonstration waiver to provide coverage to low-income individuals through a premium assistance model, otherwise known as the Health Care Independence Program. To date, 1115 demonstration waivers have offered the broadest form of waiver authority. However, in discussions preceding the enactment of the PPACA, some policymakers sought additional waiver authority under the new federal law. Section 1332 of the law provides this new waiver authority beyond Medicaid and offers states flexibility in implementing PPACA. Several states have already shown interest in utilizing the waiver authority in Section 1332 to design a system for expanding health care based on the unique characteristics of each state.[1]

WHAT IS A SECTION 1332 WAIVER?

Section 1332 of the PPACA permits states, beginning in 2017, to request up to a five-year waiver of specific PPACA requirements with the option to renew after five years. These waivers are different from 1115 waivers primarily due to the ability to waive non-Medicaid provisions of law. During the five-year waiver period, the state can implement state-specific reform with the assistance of federal funding, and seek waivers of certain PPACA provisions. To qualify for a waiver, states must enact a law that allows for submission of a 1332 waiver application, outline adherence to four specified criteria (described below), provide an implementation timeline with a 10-year budget plan, and regularly report progress to the Department of Health and Human Services (HHS) and the Department of the Treasury. The state can fund reform by redirecting federal funding from tax credits, cost-reduction payments, and small business tax credits to the reform efforts. Arkansas can utilize a 1332 waiver to design a system for expanding health care coverage that is very different from the federal law while ensuring that Arkansans continue to have access to affordable, comprehensive coverage.

WAIVABLE PROVISIONS[2,3]

1. **Individual Mandate:** States can modify or eliminate the tax penalties imposed on individuals without coverage
2. **Employer Mandate:** States can modify or eliminate penalties for large employers not offering full-time employees affordable coverage
3. **Benefits and Subsidies:** States can modify what benefit packages, subsidies, and premium tax credits must be provided
4. **Marketplaces and Qualified Health Plans (QHP):** States can modify or eliminate these as a source to determine eligibility and enrollment

1332 WAIVER CRITERIA[2]

Comprehensive Coverage: Must be as comprehensive as Marketplace Coverage

Affordability: Must provide protections against excessive out of pocket spending and be as affordable as the Marketplace

Scope of Coverage: Must provide coverage to at least as many people as PPACA does without the waiver

Federal Deficit: Must not increase the federal deficit

Required Application Information[4,5]

- A comprehensive program to implement waiver requirements with a detailed timeline
- Copy of enacted state legislation with authority to implement waiver
- List of the provisions the state seeks to waive (with reasoning)
- Effects on PPACA provisions that the state is not requesting to waive
- Process to address waste, fraud, and abuse
- Actuarial analysis and certification related to 1332 criteria adherence
- 10-year budget plan and estimated health insurance impact of waiver on coverage
- Information on population's income, health expenses, current health insurance status, and employers offering insurance

Timeline of Application Process[4]

Pass State Waiver Legislation
Timeframe Uncertain
→
State and Public Notice and Comment Period
Est. 90 Days
→
Public Hearing Period
Est. 30 Days

Submit Waiver Application to HHS and Treasury

Preliminary Review
Within 45 Days
→
Federal Public Notice and Comment Period
Est. 90 Days
→
HHS and Treasury Decision Making Period
Within 180 Days

BENEFITS

- Can use individual and small business tax credits to finance coverage[6]
- Can address gaps in PPACA (e.g., the "family glitch")
- Can be coordinated with existing waiver authority, such as Section 1115 demonstration waivers
- Can weigh broad market effects of the waiver in calculating budget neutrality

CONSIDERATIONS

- Time-consuming application
- A process must be in place to provide public notice and comment before and after the application submission
- Innovation may be more expeditious through established mechanisms—e.g., state plan amendments and existing waiver authority

RESOURCES

CLICK FOR LINK:

Understanding Health Reform's Waivers for State Innovation

The Affordable Care Act: Supporting Innovation, Empowering States

Federal Registrar Application, Review, and Reporting Process for Waivers for State Innovation

2017 Innovation Waivers: The Future is Right Around the Corner

REFERENCES

1 Kardish, C. "With Innovation Waivers, States Can Go Their Own Way on Obamacare." Accessed December 1, 2014. http://www.governing.com/topics/health-human-services/gov-innovation-obamacare-waivers.html.

2 Patient Protection and Affordable Care Act, § 1332(a)(2)

3 Bachrach D, Ario J, Kolber M. "Thinking Ahead: 1332 State Innovation Waivers." State Health Reform Assistance Network, December 4, 2014.

4 31 C.F.R. § 33.108

5 "Application, Review, and Reporting Process for Waivers for State Innovation." *Federal Register*, Proposed Rules, 76, no. 49 (March 14, 2011).

6 Wyden R. "State Waivers: How a State Could Do Health Reform Its Own Way," 2010.