

State Innovation in Obamacare? Demystifying Section 1332 Waivers

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Presentation to the Arkansas Health Care Reform Task Force

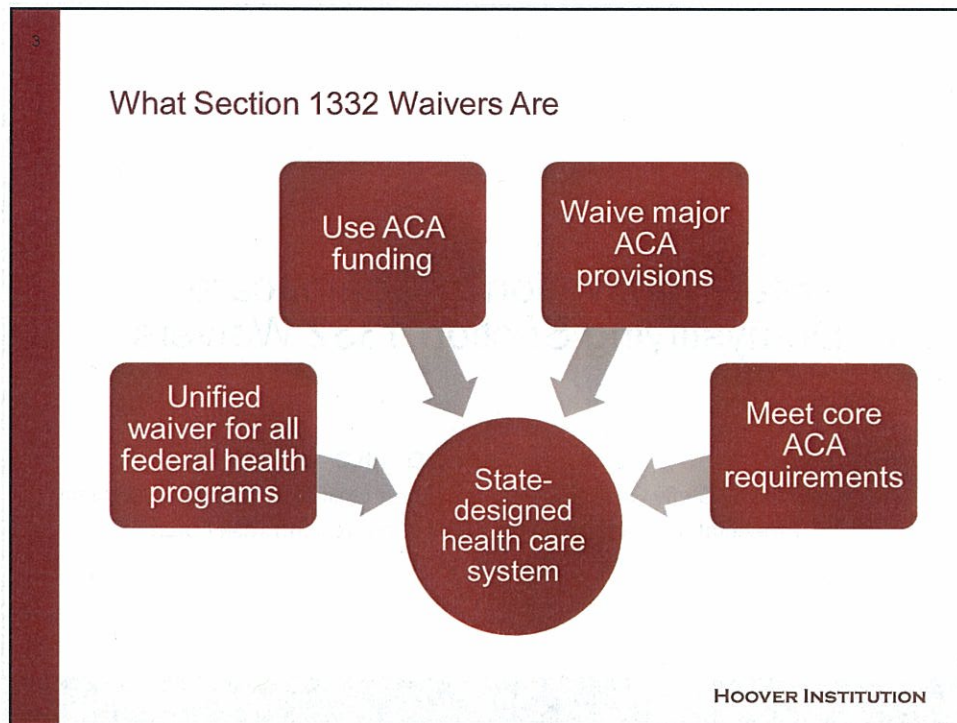
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Where We're Headed

- What Section 1332 waivers are
- A brief history lesson
- What states can and can't do with Section 1332 waivers
- The process to get a Section 1332 waiver
- State options discussion
- Possible congressional changes to improve Section 1332

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- ### A Brief History Lesson
- “Wyden’s Waivers”
 - Originally slated to go into effect in 2014 but budget uncertainty created by waivers pushed effective date to 2017
 - Bipartisan effort in 2010 (Brown-Wyden) to accelerate effective date to January 1, 2014
 - Final implementation rule issued February 27, 2012
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Section 1332 Allows for Waiver of Some of the ACA's Most Significant Provisions

- Beginning in January 2017, states may implement reform plans that waive the following requirements:
 - Section 1402: Cost-sharing subsidies
 - IRC Section 36B: Refundable tax credits
 - IRC Section 4980H: Employer mandate
 - IRC Section 5000A: Individual mandate

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Section 1332 Allows for Waiver of Some of the ACA's Most Significant Provisions

- Beginning in January 2017, states may implement reform plans that waive the following requirements:
 - Part I of Subtitle D governing establishment of qualified health plans
 - Essential Health Benefits (EHB) requirements
 - Annual limits on total cost sharing
 - Actuarial value standards for "metal level" plan categories
 - Definition of individual, small & large group aggregation rules for small and large employers

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Section 1332 Allows for Waiver of Some of the ACA's Most Significant Provisions

- Beginning in January 2017, states may implement reform plans that waive the following requirements:
 - Part II of ACA Subtitle D governing establishment of health benefit exchanges
 - SHOP & Individual
 - Products sold through exchanges
 - Medicaid eligibility and enrollment facilitation
 - Navigators
 - Self-sustaining requirements
 - Single risk pool
 - Users of the exchange

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Section 1332 Waivers Reallocate Federal Spending to States

- If the waiver eliminates the premium tax credits, cost sharing subsidies and/or small business tax credits, state governments:
 - Receive the federal dollars that would have gone to their residents and businesses to fund their health reform plan
 - Aggregate, lump-sum periodic payments that are annually adjusted on a per capita basis

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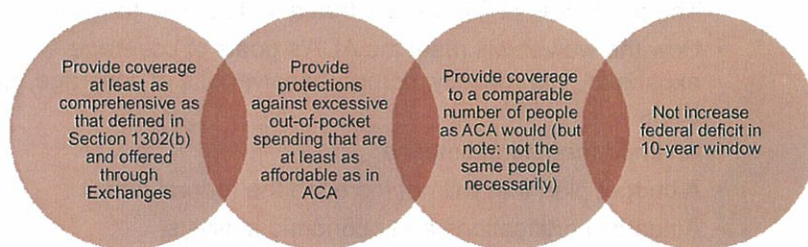
Section 1332 “Super Waiver” Concept

- Unprecedented latitude for states to apply for a coordinated waiver that applies to the full range of federal health care programs:
 - Medicare
 - Medicaid
 - CHIP
 - “any other federal law relating to the provision of health care items or services”

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But, There’s a Catch. State Reform Plans Must:



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Section 1332 Won't Waive Everything

- Section 1332 waivers WILL NOT waive:
 - Market reforms
 - Prohibition on preexisting condition exclusions
 - Rating bands
 - Guaranteed Issue
 - Hospital and care provisions
 - CMMI
 - Readmissions reduction requirements
 - DSH reductions
 - Hundreds of additional pages of other provisions

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Section 1332 Waiver Process

- Application to the HHS Secretary, who refers any relevant provisions to the Treasury Secretary
- Application must address six areas:
 - The provisions of federal law that a state seeks to waive
 - How the waiver will meet the ACA's goals of coverage expansion, affordability, comprehensiveness of coverage, and costs
 - An implementation timeline
 - A budget plan that will not increase the federal deficit
 - Actuarial certifications and economic analysis
 - An analysis of the waiver's impact on provisions of the ACA that are not waived

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Section 1332 Waiver Process

- For a state to act, its application must be backed up by a state law (but not necessarily a new one).
- HHS and Treasury must make a determination within 180 days
 - Preliminary review occurs within 45 days
 - Federal public notice and comment period of 90 days
- Five year limit on waiver, but renewable
- Initial process regulations are final; unclear if more regs are coming
- Practical realities of the process require states to begin designing waivers in 2015 for them to go into effect by January 1, 2017

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State Options

- Shift from a government-run exchange to using one or more private exchanges
- Expand or reduce products sold via Exchanges
 - e.g., Reduce to just "silver" tier or "silver" plus catastrophic
- Allow subsidies or tax credits to apply to a wider variety of plans
- Eliminate Qualified Health Plans and maximize employer-sponsored insurance
- Address affordability and structural issues that put families in different health programs
- Address impacts on small group market and small employers
- Manage churn between Medicaid and exchange

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Congressional Changes to Improve Section 1332

- Accelerate effective date
- Deem state reform plans presumptively valid so long as deficit is not increased
 - Revisit affordability, comprehensiveness, and scope questions after waiver has been in effect for some time
- Better define core requirements of what is needed for a successful waiver, such as comprehensiveness and affordability

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