

1332 Waivers and Health Centers

Emerging Issues #12



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Section 1332 of the Affordable Care Act (ACA) enables states to waive certain health insurance coverage requirements beginning January 1, 2017. These new 5-year renewable 1332 waivers (or “state innovation waivers”) will provide states with a pathway for modifying how they implement key coverage provisions. Health centers will want to closely monitor 1332 waivers developed by their state as changes to health insurance marketplaces (or “exchanges”) or programs created by the waiver may impact their patients and the services they provide, including outreach and enrollment assistance activities.

This brief will provide an overview of the 1332 waiver option and key items which health centers should be aware of to help them engage in the development of 1332 waivers in their state to ensure their patients have continued access to high-quality care.

Overview of 1332 Waivers

Unlike Medicaid Section 1115 waivers that allow states to seek federal approval to change their Medicaid program and Children’s Health Insurance Program (CHIP), 1332 waivers offer states the chance to seek federal approval to implement alternatives to a number of the ACA’s provisions related to private health insurance.¹ As described in Table 1, the Secretary of Health and Human Services (HHS) and the Secretary of the Treasury are authorized to waive certain provisions under their respective jurisdictions related to the health insurance marketplaces and the employer and individual mandates.²

TABLE 1: ACA provisions the Secretaries of HHS and Treasury are authorized to waive³

ACA Provision(s)	Items covered in provision(s)
Part I of Subtitle D of Title I of the ACA	Establishment of qualified health plans (QHPs)
Part II of Subtitle D of Title I of the ACA	Consumer choices and insurance competition through health insurance marketplaces
Sections 36B of the Internal Revenue Code and 1402 of the ACA	Premium tax credits and cost-sharing reductions for plans offered within the marketplaces
Section 4980H of the Internal Revenue Code	Employer mandate
Section 5000A of the Internal Revenue Code	Individual mandate

¹ A 1332 waiver cannot waive rules that guarantee all enrollees equal access to fair prices or the ACA’s nondiscrimination provisions.

² "Waivers for State Innovation; Notice of proposed rulemaking," 80 Federal Register 78131 (16 December 2015), pp. 78131-78135. Accessed June 20, 2016. <https://federalregister.gov/a/2015-31563>.

³ Ibid.

In order to be approved by the U.S. Departments of Health and Human Services and the Treasury, a 1332 waiver proposal submitted by a state must follow a public review process (described in appendix A) and meet four criteria:^{4,5}

1. **Coverage Rates:** Regardless of the type of coverage (e.g., marketplace, Medicaid, employer-sponsored), the number of state residents forecasted to have coverage under the waiver must be no less than the number of state residents with coverage absent the waiver. Federal review of a state's proposed waiver will also take into account the impacts the waiver will have upon different populations, particularly residents who are vulnerable, low-income, or elderly, or have or are at risk of developing serious health issues.
2. **Affordability:** The net out-of-pocket costs state residents pay on average for health coverage under the waiver must be forecasted to be as affordable for coverage without the waiver. The waiver's impact on the number of individuals with large health care spending burdens relative to their incomes will be considered during the federal review process, along with impacts on vulnerable populations.
3. **Comprehensiveness:** The scope of health benefits provided to state residents under the waiver (regardless of what type of coverage they have) are expected to be at least as comprehensive without the waiver. Final federal guidance states that a 1332 waiver cannot satisfy this requirement if the waiver decreases any of the following:⁶
 - The number of residents with coverage that is at least as comprehensive as the state's benchmark in all ten essential health benefit (EHB) categories.
 - The number of residents with coverage that is at least as comprehensive as the state's benchmark in any of the ten EHB categories.
 - The number of residents whose coverage includes the full set of services that would be covered under the state's Medicaid and/or CHIP programs, holding the state's Medicaid and CHIP policies constant.

Federal review will also consider any impacts on vulnerable populations.

4. **Deficit Neutral:** The waiver cannot increase the federal deficit, rather any changes made by the waiver must be federal deficit neutral in each year of the waiver and over a 10-year budget period. If a state submits a 1332 waiver and an 1115 Medicaid waiver together, the waivers will be evaluated independently to ensure that each fulfills the respective federal standards. This means any budget changes forecasted under a proposed 1115 waiver will not be considered when evaluating a proposed 1332, and vice versa.

In addition to satisfying the four criteria, technical capabilities will also be considered. For example, a state is likely to have limited ability to make changes if it relies on Healthcare.gov for its marketplace as CMS is not

⁴ "Waivers for State Innovation; Notice of proposed rulemaking," 80 Federal Register 78131 (16 December 2015), pp. 78131-78135. Accessed June 20, 2016. <https://federalregister.gov/a/2015-31563>.

⁵ Centers for Medicare & Medicaid Services, The Center for Consumer Information & Insurance Oversight, Section 1332: State Innovation Waivers. Accessed June 20, 2016. https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html

⁶ Waivers for State Innovation; Notice of proposed rulemaking," 80 Federal Register 78131 (16 December 2015), pp. 78131-78135. Accessed June 20, 2016. <https://federalregister.gov/a/2015-31563>.

currently able to customize the federal platform to account for changes in benefits, eligibility, or enrollment periods.

State Innovation Waivers & Health Centers

Health centers will want to monitor the development of 1332 waivers in their state as any proposals that are submitted to the federal government and approved could have serious impacts on their patients, communities, and the services they provide. Federally qualified health centers (FQHCs) will especially want to watch for proposals to waive or modify two provisions that fall into the scope of the 1332 waiver and directly impact FQHCs. These provisions are:

- **ACA Section 1311(c)(1)(C):** Requires that qualified health plans (QHPs) sold on the marketplace include essential community providers that serve predominantly low-income individuals (including FQHCs) in their provider networks.⁷
- **ACA Section 10104(b)(2):** Requires that QHPs contracting with a FQHC for the provision of items or services covered by the plan, must pay the FQHC no less for services or items than the health center would have been paid under their Medicaid prospective payment system (PPS).

While health centers will want to be aware of proposed policy changes and provide valuable input, 1332 waivers also provide an opportunity for health centers to partner with their state and other community leaders to explore policy solutions. With roughly 1,300 health centers currently receiving ongoing funds from the Health Resources and Services Administration (HRSA) to conduct outreach and enrollment assistance activities in their service areas, health centers are uniquely positioned to help identify possible coverage innovations or targeted modifications that could be pursued via a 1332 waiver to improve access to care and the consumer experience.

Recent 1332 Waiver Considerations

States can begin implementing approved 1332 waivers in January 2017. Two states have crafted applications that make limited changes, and they are currently seeking public input on the proposals. These states are:

- **Hawai'i:** The State of Hawai'i plans to submit a waiver to continue the employer mandate, the Prepaid Health Care Act, it has had in place since 1974. The state's mandate is more sweeping than the ACA's employer mandate and has proven successful in reducing the state's uninsured rate.⁸
- **Vermont:** The State of Vermont has submitted a request to waive the ACA's technology requirements for the small group market. If approved, this waiver would allow the state to continue its pre-ACA policy of allowing employers to directly enroll with health insurance issuers rather than through a web-based portal.⁹

⁷ This provision includes in its definition of essential community providers the safety net providers listed in Section 340B(a)(4) of the Public Health Service Act, which includes FQHCs.

⁸ Executive Chambers of the Governor, Hawai'i's Proposal to Waive Certain Provisions of the Patient Protection and Affordable Care Act, at 49 (Haw. 2016). Accessed June 20, 2016. <http://governor.hawaii.gov/wp-content/uploads/2016/01/Hawaii-ACA-Waiver-Proposal-DRAFT-1-12-16.pdf>.

⁹ Department of Vermont Health Access, Vermont's Proposal to Waive Affordable Care Act Requirement to Establish an Internet Portal for the Small Business Health Options Program (SHOP) per Section 1332, Waivers for State Innovation, A., at 58 (Vt. 2016). <http://dvha.vermont.gov/global-commitment-to-health/vermont-1332-waiver-for-state-innovation-application.pdf>

Some states have also formed workgroups or taskforces to explore ideas they could pursue via a 1332 waiver, while in others the legislatures have passed or introduced bills authorizing the state to pursue waivers. Examples include:¹⁰

- **Arkansas:** Governor Asa Hutchinson signed legislation (HB1001/SB1) to continue Arkansas' 1115 waiver demonstration that enrolls the state's Medicaid expansion population into QHPs on the marketplace, but with some modifications. If approved by the federal government, the modified program, known as Arkansas Works, would require Medicaid-eligible individuals to enroll in employer-sponsored insurance (ESI) if it is available to them. If an employer agrees to participate in the program, Medicaid would then provide wrap around coverage to cover the employee's premium and cost sharing and any Medicaid benefits not covered by the ESI. The state may apply for a 1332 waiver in addition to an 1115 waiver to implement certain aspects of the program.^{11,12}
- **California:** Governor Jerry Brown signed legislation (SB10) that directs the state to apply for a waiver in order to allow undocumented Californian residents, who are not eligible for Medicaid, to purchase private coverage on the marketplace.¹³
- **Minnesota:** The State of Minnesota 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,¹⁴ and implementing more graduated subsidies.¹⁵
- **Ohio:** The State of Ohio 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.¹⁶
- **Rhode Island:** The State of Rhode Island 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.¹⁷

¹⁰ For more examples, visit: <http://www.ncsl.org/research/health/state-roles-using-1332-health-waivers.aspx>

¹¹ "State Health Initiatives: Perspectives from Governor Asa Hutchinson (R-Ark)." Video file, 1:07:03. Health Affairs Blog. Posted by Tracy Gnadinger, February 24, 2016. Accessed June 20, 2016. <http://healthaffairs.org/blog/2016/02/24/arkansas-governor-asa-hutchinson-on-making-the-medicaid-private-option-work/>.

¹² HB1001, 90th Gen. Assem. (Arkansas 2016). Accessed June 20, 2016.

<http://www.arkleg.state.ar.us/assembly/2015/2016S2/Acts/Act1.pdf>

¹³ S. 10 (California 2015-2016). Accessed June 20, 2016.

http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0001-0050/sb_10_bill_20160610_chaptered.pdf

¹⁴ The family glitch refers to a provision in the ACA that makes dependents ineligible for tax credits if their family member is offered employer coverage, even if that coverage is considered unaffordable for a family.

¹⁵ "Health Care Financing Task Force Final Report--At-a-Glance Summary of Recommendations." Working paper, January 21, 2016. Accessed June 20, 2016. <http://mn.gov/dhs/images/final-materials-rrecommendations-1-21-16.docx>.

¹⁶ Main Operating Budget FY2016-FY2017, H.R. HB64, 131st Gen. Assem. § 3901.052 (Ohio 2015). Accessed June 20, 2016. <https://legiscan.com/OH/text/HB64/id/1252465>.

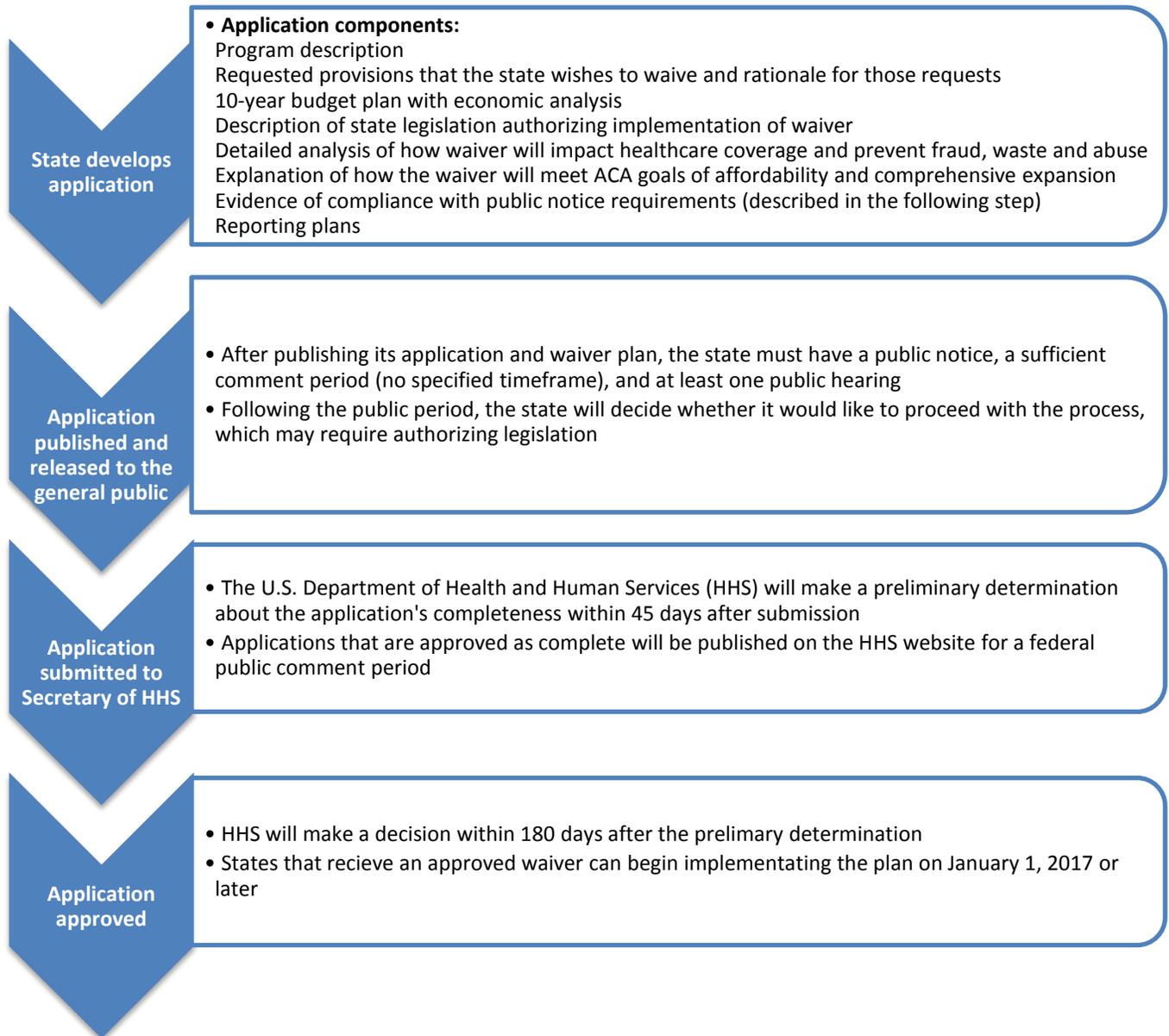
¹⁷ Article 18 as Amended Relating to Health Reform Assessment and Health Benefit Exchange, R.I. Gen. Laws §§ 42-157-5 (Rhode Island 2015). Accessed June 20, 2016. <http://webserver.rilin.state.ri.us/billtext15/housetext15/article-018-sub-a-as-amended.htm>.

Conclusion

As with any new program, there are still many unknowns surrounding the 1332 waiver. It is unknown to what degree states will utilize the new waiver option and what policy concepts they may pursue, or how future federal administrations could decide to shape the rules governing the waiver program. Health centers, with the help of their primary care associations, will want to be attentive to 1332 waiver developments in their state and look for opportunities to share ideas.

Appendix A: The 1332 Waiver Process^{18, 19}

The following chart provides an overview of the 1332 waiver application and review process.



¹⁸ "Waivers for State Innovation; Notice of proposed rulemaking," 80 Federal Register 78131 (16 December 2015), pp. 78131-78135. Accessed June 20, 2016. <https://federalregister.gov/a/2015-31563>.

¹⁹ "Section 1332: State Innovation Waivers," Center for Consumer Information & Insurance Oversight, Centers for Medicare & Medicaid Services (n.d.). Accessed June 20, 2016. https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-.html

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