COMMUNITY CATALYST

An Advocate's Guide to 1332 State Innovation Waivers

The Basics

What is a 1332 waiver?

Section 1332 of the Affordable Care Act (ACA) permits a state to request a five-year renewable waiver from the ACA's key coverage provisions. This waiver allows states to propose state-specific alternatives to Marketplaces, benefits, subsidies and qualified health plans as well as the individual and employer mandates. Once the Department of Health and Human Services (HHS) approves a state's 1332 waiver application, the earliest a waiver can take effect is January 1, 2017.

Who is paying?

The federal government will provide a state with an approved 1332 waiver the funds originally intended for tax credits and cost-sharing reductions for eligible residents. This is the same federal funding a state would have received without the waiver; however, these funds can be reallocated to accomplish the goals of the approved waiver.

The Guardrails

What in the ACA can't be waived?

A state may not use a 1332 waiver to waive the provisions of the ACA designed to protect consumers from discrimination and guarantee equal access to coverage, such as the:

- ACA's nondiscrimination provisions
- Prohibition from denying coverage or charging higher premiums to people with preexisting conditions
- Ban on annual and lifetime limits in plans
- Requirements to cover preventative care or dependents up to age 26

Are there additional limits?

Yes! The ACA requires that all 1332 waiver proposals meet certain broad criteria to ensure that consumers have the same, but hopefully better, access to affordable and comprehensive coverage in a state that chooses to pursue a 1332 waiver. The 2012 final regulations did little to specifically address how HHS will determine if a state meets the standards of these broad protections. That being said, the law requires a state to prove that a 1332 waiver proposal ensures that coverage:

- Is at least as **comprehensive** as coverage absent the waiver,
- Is at least as **affordable** as coverage absent the waiver,
- **Covers** about the same number of people as would have been covered without the waiver, and
- Will not increase the **federal deficit**.

The Process

Application requirements

A state must submit their application for a 1332 waiver to HHS "sufficiently in advance of the requested effective date" to allow for an appropriate implementation timeline. However, there is no deadline for submitting a 1332 waiver application. The application must include, among other things, the ACA provisions the state seeks to waive with an accompanying explanation, a detailed 10-year budget plan, actuarial and economic analyses, and proof that the proposal meets the four guardrail protections outlined above.

Opportunities for Advocacy

Pre-application

Ideally, a state considering a 1332 waiver will first provide opportunities for stakeholder engagement in order to collectively determine if and/or why the state might need a 1332 waiver. Hawaii has a great example of a transparent process for 1332 development through a state taskforce. Additionally, a legislative task force in Arkansas and state-wide coalition including consumer advocates in Minnesota are considering how a 1332 might work in their states, among other reforms. These groups allow advocates to engage in the conversation and present a key opportunity to address consumers' needs in these important health care reforms.

Application development

Prior to submitting a 1332 waiver application, a state must conduct public hearings and provide a public notice and comment period "sufficient to ensure a meaningful level of public input." The length of the comment period and number of hearings will be determined by the state and the complexity of the 1332 waiver proposal. The federal comment period must also guarantee enough time to ensure a meaningful level of public input, in which advocates will also have a chance to provide comments.

Implementation

Upon HHS approval of a state's 1332 waiver, the state must hold a public forum within six months to solicit comments on the progress of implementation. These forums must be held on a yearly basis, providing advocates the opportunity to raise any issues consumers might be facing as a result of the state's 1332 waiver. Summaries of these forums must be included in the quarterly and annual reports that the state is required to submit to HHS.

The Possibilities

The possibilities for innovation will depend greatly on a state's unique environment and reform needs. However, as outlined above, any of these reforms must occur within the parameters of the statutory guardrails. For additional information on how to frame the possibilities of a 1332 waiver in a consumer-friendly way, see our Consumer Principles in State Innovation Waivers resource.

Examples of broad reforms: A state could, among other things, replace the individual mandate with reduced opportunities for open enrollment or late enrollment penalties, create an alternative benefit and/or subsidy system, or completely eliminate the current Marketplace structure.

Examples of narrow reforms: A state could, among other things, align income and eligibility rules for Medicaid and Marketplaces, fix the family glitch, or allow consumers to purchase catastrophic coverage regardless of age or exemption status.