Medicaid (1115) and Marketplace (1332) Waiver Authority

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Agenda

- Section 1115 Medicaid Demonstration Waivers
- Section 1332 State Innovation Waivers
- Key Takeaways

Section 1115 Medicaid Demonstration Waivers

Section 1115 Waivers: An Overview

Waiver Requirements

- **Federal Medicaid law requires that waivers:**
  - "Further the objectives" of the Medicaid program
  - Be authorized for a demonstration purpose, subject to evaluation
  - Affect a section of the federal Medicaid law subject to waiver (e.g., federal match rate is not waivable)
- **By longstanding practice, waivers must be budget neutral to the federal government**
- **Public comment periods for new waivers and renewals are required at the state and federal levels; public input requirements more limited for amendments**

Common Waiver Uses

Managed Care Waivers: New populations and new services

Delivery System Reform Waivers: Often involve substantial federal investment

Uncompensated Care Pool Waivers: Payments – typically for hospitals – to reimburse for uncompensated care

Expansion-Related Coverage Waivers: Allows states to modify features of Medicaid coverage (e.g., premiums, higher copayments)

Source: Social Security Act (SSA) § 1115; See SSA § 1916(f) for cost sharing waiver limitations.
**States may only waive the previsions in SSA § 1902.*

Selected Provisions that Can Be Waived

Statewideness

Single State Agency

Eligibility

- Expansions
- Time limits/enrollment caps/enrollment periods
- Presumptive eligibility, retroactive coverage

Benefits/Services

- Vary benefits for different populations under the waiver
- Waiver of non-emergency medical transportation

Cost-Sharing Requirements

Delivery system

- Freedom of choice
- Provider networks

Financing/reimbursement

- Costs not otherwise matched

What Cannot be Waived?

The Secretary *may not* waive certain statutory provisions, including:

- Federal Medical Assistance Percentage (FMAP) formula
- FMAP claiming processes
- Income counting rules and the prohibition on the asset test
- Cost sharing requirements (limited waiver authority)
- Spousal impoverishment protections

Waivers are Discretionary

By longstanding practice, once an Administration has approved a waiver of particular provisions, the waiver sets a precedent and similar waiver requests are generally approved. However, different Administrations may take different approaches, and Administrations are not legally obligated to approve waivers.

Source: Social Security Act (SSA) § 1115; See SSA § 1916(f) for cost sharing waiver limitations.
**States may only waiver the previsions in SSA § 1902.*

Section 1332 State Innovation Waivers

1332 Waiver Authority

Section 1332 of the ACA authorizes waivers of four components of the law

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 may modify the rules governing covered benefits and subsidies. States that reallocate premium tax credits and cost-sharing reductions may receive the aggregate value of those subsidies for alternative approaches.

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.

Some ACA Provisions Are Not Waivable

States may not waive guaranteed issue and related rating rules

Fair play rules

States may not waive non-discrimination provisions prohibiting carriers from denying coverage or increasing premiums based on health status. States are precluded from waiving rating rules that guarantee equal access at fair prices, including age rating.

Section 1332 Statutory Guardrails

- **The statute requires that all section 1332 waivers comply with guardrails protecting consumers and ensuring deficit neutrality**
- **Even if guardrail requirements are met, limited precedent exists with this authority, and HHS and Treasury retain significant discretion over whether to approve or deny waivers**

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.

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 including all changes in income, payroll, or excise tax revenue, as well as any other forms of revenue.

Current Status of 1332 Waiver Proposals

Hawaii

- Nation's first 1332 waiver approval
- Waives the ACA employer mandate and small business requirements to resolve inconsistencies between the ACA and the state's longstanding employer-sponsored insurance requirement

Approved 12/30/2016

Idaho

- Joint 1332/1115 waiver
- Extend Marketplace premium tax credits to adults with incomes <100% FPL
- Extend Medicaid to high-need individuals with incomes <400% FPL
- Permit insurers to cede enrollees with high-risk medical conditions to high risk pool

Application pending

Iowa

- Replace Marketplace tiers with one standardized plan
- Restructure premium subsidies based on age and income
- Implement reinsurance program

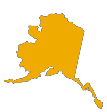
State withdrew waiver on 10/23/17

Massachusetts

- Create Premium Stabilization Fund in lieu of Cost Sharing Reduction payments

Found incomplete by the Administration on 10/23/17

Reinsurance Waivers

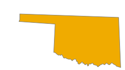


Alaska*

Oregon*

Minnesota*

New Hampshire



Oklahoma**

** Approved*

***Withdrawn by state on 9/28/17*

1332 Waivers: Implications for CA Proposals

- Under a 1332 waiver, the state could could repurpose premium tax credits (and cost-sharing reductions [CSRs] if appropriated) if the proposal complies with statutory guardrails
  - Health & Human Services/Treasury can reject waiver even if it meets the four guardrails
- If the state's 1332 proposal reduces federal premium tax credit spending, the state could receive pass-through funding in the amount of the savings to the federal government
- Deficit neutrality under 1332 waivers is calculated by assessing the net effect on the federal deficit, including all income, payroll and excise taxes and various healthcare tax credit expenditures
- The 1332 authority is the newest of the federal waiver authorities, effective starting in 2017, so there is limited precedent about what types of initiatives will be approved under this authority beyond targeted reinsurance proposals

Key Takeaways

Key Takeaways

- 1115 and 1332 waivers allow states considerable flexibility to innovate and test new ways of delivering (and funding) health care coverage
- Both Medicaid and Marketplace coverage have restrictions on what provisions are waivable
- Waivers are always discretionary
- There is some always uncertainty about what an Administration, especially a new one, will permit to be waived, particularly for proposals that test "new ground"

Questions?

Thank You!

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