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Section 1332 State Innovation Waiver

A Vehicle for Change

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A little-known provision of the Affordable Care Act (ACA) is receiving a great deal of attention from states that are interested in the prospect of designing their own pathways to meet the law's coverage and affordability goals.

Section 1332 of the ACA creates a new option for states called an innovation waiver.

This waiver allows states to modify or opt out of many of the ACA's key coverage provisions, but still receive the full ACA funding as long as they figure out how to meet or even exceed the law's requirements.

It also allows states to coordinate waivers and change provisions of other federal programs, such as Medicare and the Children's Health Insurance Program (CHIP). In short, the waivers serve as a vehicle for states to accomplish their health care goals in ways that best suit their residents.

But states must first decide what they want their health care landscape to look like and what they want to accomplish.

Some states have already begun discussing how an innovation waiver could help meet their goals around health care, and others are certain to start the discussion. The few states that have begun conversations are still in the early stages.

1332 Waivers: Frequently Asked Questions

Innovation waivers are also called "1332 waivers" in reference to the section of the Affordable Care Act that permits them.

What Key ACA Provisions May Be Waived?

- **The Individual Mandate.** States may adjust or modify the requirement that most people have insurance coverage.
- **The Employer Mandate.** States may change the requirement that all employers with more than 50 employees must offer health insurance to their full-time workers, defined as those who work at least 30 hours a week.
- **Benefits and Subsidies.** States may alter the benefits that must be covered by insurance plans. States may also change rules concerning tax credits and cost-sharing reductions.
- **Marketplaces and Qualified Health Plans.** States may modify or replace their health insurance marketplaces with other avenues for providing health insurance, enrollment and financial assistance. They can also alter the benefits that must be included in health plans that qualify to be sold through the marketplace.

Who Is Paying?

States are entitled to the same federal funding they would have received without an innovation waiver. This includes funds originally intended for financial assistance in the form of tax credits or cost-sharing reductions. States can reallocate these funds to accomplish the health care goals outlined in an approved innovation waiver.

What Can't Be Waived?

- **Guaranteed Issue.** The provision that prohibits insurance companies from denying coverage because of health status, occupation, age or gender.
- **Rating Bands.** The limits placed on how much premiums can vary based on age, health status, tobacco use and gender.
- **No-cost Preventive Services.** New requirements for almost all health plans to cover preventive services, such as immunizations and screenings, without charging a co-pay, even for enrollees who have not met their deductible.
- **Pre-existing Conditions.** The prohibition against charging more or denying coverage because of an existing health condition.

What Criteria Must Be Met?

- **Comprehensive.** Coverage must be comparable to the ACA coverage without a waiver.
- **Affordable.** Coverage must be equally affordable and it must protect against excessive out-of-pocket costs.
- **Scope.** Coverage must apply to just as many residents.
- **Federal Deficit.** Coverage provided under the waiver must not increase the federal deficit.

How Are States Thinking About Innovation Waivers?

States are deciding whether to use innovation waivers to pursue their own broad goals for health reform or to make targeted modifications to the existing rules.

One broad approach could include addressing one of the least popular provisions of the ACA: the individual mandate that most people purchase health insurance. A state may consider an alternative to the mandate and its financial penalty, such as allowing consumers to enroll outside of the open enrollment period if they are willing to pay a fine. This would encourage people to purchase health insurance in advance of when they need medical care, and not only when they become sick or injured.

States could pursue a broad approach of providing universal coverage. An innovation waiver could be used to establish automatic enrollment in a public system designed to be the sole provider of coverage. Or it could be used to add other large populations of purchasers – such as state employees – to their state marketplace.

A more focused approach could include addressing specific issues that have emerged from the ACA. For example, states could tighten the three-month grace period for consumers to pay their premiums to one month, which is common in the insurance industry outside the marketplace.

These are only some of the many options states have to reform their health insurance market under the innovation waivers.[1]

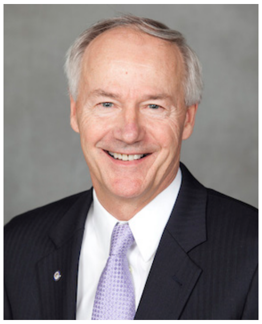
On the Front Lines: Innovation Waivers and Other States

Arkansas

Arkansas is no stranger to waivers.

Arkansas was the first state to receive a Medicaid waiver – called a section 1115 waiver – which it used to create the "private option." The program enrolls people newly eligible for Medicaid in a private marketplace plan, earmarking Medicaid funds to pay the premiums.

Arkansas Governor **Asa Hutchinson** has said he is interested in how an innovation waiver can play a role in the future of the private option.



Governor Asa Hutchinson

Currently, Arkansas pays for benefits that are traditionally covered by Medicaid but are not always offered in the private plans participating in the program. An innovation waiver could be used to find private market alternatives to the expenditures for these "wraparound" benefits.

The legislative oversight committee of the Arkansas Health Insurance Marketplace (AHIM) has also expressed interest in using an innovation waiver to establish an alternative to the marketplace. One option the committee is exploring would allow those who are eligible for Medicaid to enroll in private plans outside the marketplace. The innovation waiver would allow for financial assistance in the form of tax credits and cost-sharing reductions.

Hawaii

Hawaii's Prepaid Health Care Act requires employers to offer health insurance to their employees, an employer mandate that was enacted well before the ACA. But its stricter rules cause some confusion and discrepancy between the state and federal laws.

As a result, Hawaii's state legislature created a task force to explore using a state innovation waiver to address the confusion. The task force is prioritizing issues and studying how much money is available to reallocate to the state's priorities.

Minnesota

The Minnesota Department of Human Services is exploring how to use an innovation waiver to improve continuity of coverage and eligibility for Minnesotans who "churn" between Medicaid and private plan enrollment. One option may be to use an innovation waiver in coordination with a section 1115 waiver to eliminate sharp differences in out-of-pocket costs between Medicaid and private insurance, often known as the affordability cliff. The state may also create new reforms that hold providers accountable for health care outcomes.

[1] Gillespie, C. (2015). *Section 1332 Waivers: Breaking Out of the Obamacare Box*. The Institute for HealthCare Consumerism. http://bit.ly/1Frrpgv.
Bachrach, et al. (2015). *Innovation Waivers: An Opportunity for States to Pursue Their Own Brand of Health Reform.* Commonwealth Fund. http://bit.ly/1Jhf0Sz.

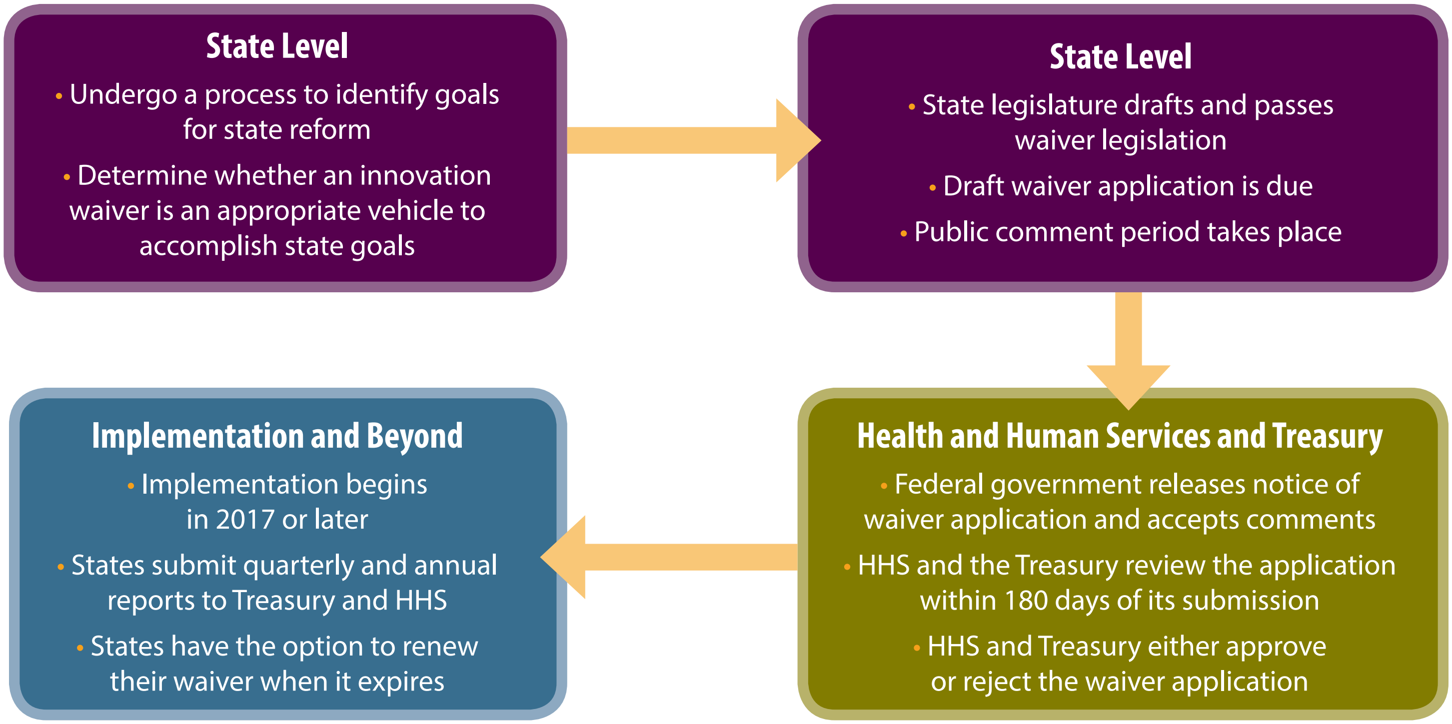
The Nuts and Bolts

The ACA specifies that innovation waivers may be implemented beginning in 2017. Applications are considered by the U.S. Departments of Health and Human Services (HHS) and the Treasury.

States must first think through their goals and determine if an innovation waiver is appropriate. Then they can begin the technical process of writing and submitting an application.

States may submit a request for up to a five-year waiver. States may submit innovation waivers in combination with other waivers, and HHS must review them together. HHS has offered limited guidance so far.

Figure 1. The Process of Pursuing a State Innovation Waiver



Conclusion

Innovation waivers represent a unique opportunity for states to shape their health care landscape.

States must identify their goals and understand how an innovation waiver will help accomplish them, keeping in mind that a waiver may not be necessary or the best way to accomplish their objectives.

Although the innovation waiver is relatively flexible, some provisions can't be waived. The burden falls on the states to develop a plan that is at least as affordable and comprehensive as the ACA without increasing the federal deficit – a substantial undertaking that will require extensive planning.

Innovation waivers answer the question, "How?" The real work lies in the process that interested states must first pursue to address the "What?"

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