August 2016

Fact Sheet

Section 1332 of the Affordable Care Act

An Opportunity for Innovation in Maternal & Child Health

The AMCHP Role

AMCHP supports state maternal and child health (MCH) programs and provides national leadership on issues affecting women and children*. We work with partners at the national, state and local levels to promote women's health; provide and promote family-centered, community-based, coordinated care for women and children; and facilitate the development of community-based systems of services for women, children and their families.*

The AMCHP National Center for Health Reform Implementation *provides state MCH leaders and their partners with the information, tools and resources to optimize the opportunities presented by the Patient Protection and Affordable Care Act (ACA) for improving services, systems and health outcomes for MCH populations.*

Introduction

The Patient Protection and Affordable Care Act (ACA) has made health insurance increasingly available to millions of women, children and families, many for the first time. Because of the ACA's various reforms — including the creation of the Health Insurance Marketplace (Marketplace) and the expansion of state Medicaid programs — more women, children and families are accessing high quality, affordable health care. The ACA contains a number of mandatory provisions pertaining directly to maternal and child health (MCH) populations, including coverage of maternity services, as well as well-woman and well-child visits without cost-sharing. The ACA provides states considerable flexibility to invest in innovative strategies to promote better health. One approach to innovation that states may elect is implementing a section 1332 State Innovation Waiver (1332 waiver).

Section 1332 of the ACA allows state governments to submit applications to the U.S. Department of Health and Human Services (HHS) and the U.S. Department of the Treasury (Treasury) to waive certain coverage provisions of the ACA, including those related to benefits and subsidies, the Marketplace, and the individual and employer mandates. The waiver allows states to virtually rebrand the ACA in an attempt to better serve the unique health needs of their residents. Depending on policy and/or political priorities, states may propose waivers to pursue broad coverage and benefit alternatives or more targeted fixes intended to resolve state-specific issues with implementing some aspect of the ACA.

Options, Requirements and Key Considerations for States

State applications for a 1332 waiver must be approved by both the HHS Secretary and the Secretary of the Treasury. The secretaries are authorized to approve alternative approaches to the ACA in any of the following categories – but if they do so, they must still ensure that residents have equally comprehensive, affordable coverage:

- **Qualified Health Plans and their Benefits**: States may modify the rules governing covered benefits.
- **Qualified Health Plans and their Subsidies**: States could ask the federal government to stop providing advanced premium tax credits

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(APTCs) and cost-sharing reductions to its low and middle income residents, and instead use the money for a different, state-structured program to make coverage affordable to those populations.

- **Marketplaces and Shopping for Coverage**: States may propose alternative ways to shop for and enroll in competitive, affordable health plans outside of their existing Marketplace.
- **The Individual Mandate**: States may modify or waive the requirement that individuals maintain minimum essential coverage.
- **The Employer Mandate**: States may modify or waive the requirement that large employers offer affordable coverage to their full-time employees.

States that receive approval for their 1332 waivers may be eligible to use federal funding that otherwise would have been spent on APTCs and cost-sharing reductions for the state's alternative program. To receive these funds, states must offset any added federal cost associated with ACA modifications with federal savings in other areas.

Additionally, states must demonstrate that their 1332 waiver applications meet the following criteria:

- **Comprehensive Coverage**: States must provide coverage that is *at least* as comprehensive as coverage absent the waiver.
- **Affordable Coverage**: States must provide cost-sharing opportunities to combat excessive out-of-pocket spending that are *at least* as affordable as coverage absent the waiver.
- **Number of People Covered**: States must ensure that the waiver does not result in a higher number of uninsured individuals relative to the current law.
- **Federal Deficit**: Any added programs or benefits under the waiver must not increase the federal deficit.

These protections or "guardrails" are designed to guarantee that the bedrock principles of the ACA are not tampered with during the waiver process. States must demonstrate in their 1332 waiver applications that these principles will not be jeopardized.

In addition to the abovementioned guidance, states may also face some operational and administrative challenges when considering 1332 waiver possibilities. For example, states operating their enrollment services through the federally-facilitated Marketplace (HealthCare.gov) will have additional considerations to weigh. States using this technology may not be able to modify eligibility rules or enrollment periods, for example, unless they first transition to a state-based Marketplace.

Moreover, states may face roadblocks to innovation by way of the Internal Revenue Service (IRS). Despite the fact that the ACA's tax provisions are alterable under 1332 waivers, the IRS generally is not able to administer state-specific rules. Thus, while states might waive an ACA tax provision to make way for new rules, they will not be able to require the IRS to implement new state-specific tax programs. Further guidance on these and other concerns is anticipated from the Centers for Medicare & Medicaid Services (CMS).

Application Process and Procedures

Prior to submitting a 1332 waiver application to HHS, authorizing legislation must be passed at the state level. Additionally, a state must provide public notice to its residents of the intentions of the application, as well as host a public comment period sufficient to ensure a meaningful level of public input. During the public comment period, the state must conduct public hearings regarding the state's application as well as review written comments from all interested parties. The state-level public comment period is intended to promote transparency throughout the application process.

Once a completed application is submitted, it will be made public through the HHS website, and a federal public comment period will commence while the application is under federal review. A final decision regarding the waiver will be issued no later than 180 days after it was determined complete by the secretaries. Approved plans can go into effect as early as January 1, 2017.

How States Might Use 1332 Waivers

To date, a number of states including Arkansas, California, Hawaii, Minnesota and Vermont have expressed interest, convened working groups, passed legislation or began formal discussions with HHS about submitting a 1332 waiver application. Possible avenues of exploration for proposals include:

- **Creating a Public Option**: States could consider providing coverage to all residents under the age of 65 by decoupling employment from health insurance coverage and relying only on private Marketplace coverage for non-Medicaid eligible individuals and families. A state-designed public option could substantially broaden the array of affordable choices available to individuals and families.
- **Promoting Better Alignment with Medicaid**: States could improve coordination with Medicaid to better maintain continuity of care when individuals and families experience changes in income, family size or employment. A provision of this kind could be particularly beneficial for women of reproductive age who become pregnant and subsequently churn between private and public insurance coverage.
- **Fixing the "Family Glitch"**: States could choose to make tax credits available to individuals who are currently prevented from receiving financial assistance on the Marketplace because they are eligible for employer-sponsored coverage through a spouse or parent's job, even though that coverage is not affordable to them. Eliminating the so-called "family glitch" could help ensure that all members of a household have access to affordable health insurance. This is particularly relevant to MCH populations because children are more likely to have health insurance coverage if their parents are also covered.

It is important to note that some of the abovementioned waiver possibilities may require state funding in addition to what is available federally.

When considering the possibilities of a 1332 waiver, it is important to note that section 1332 of the ACA is a *Marketplace* authority and cannot waive or alter any Medicaid requirements. All state Medicaid requirements previously established by 1115 waivers will continue as designed. That said, the ACA does allow states to submit coordinated applications for section 1332 (Marketplace) and 1115 (Medicaid) waivers. If a state chooses to do so, each application will be evaluated separately at the federal level.

The Title V Role in the 1332 Waiver Application Process

The decision to pursue a 1332 waiver can impact a state's overall public health agenda as well as its MCH programming. With the potential for program transitions, benefit modifications and eligibility changes, it is important for state Title V leaders to have a voice in their state's waiver planning process.

For example, when a state considers applying for a 1332 waiver, Title V programs can convene public and private stakeholders to discuss the potential challenges, opportunities and risks in redesigning ACA-related health care delivery, benefits, and payment methods that meet the unique needs of women, children, including children and youth with special health care needs (CYSHCN), and families. Title V staff are well equipped to help rebuild and/or strengthen integrated service delivery and benefit systems; as such, Title V staff should participate in these conversations from the outset.

State Title V programs can also engage in the waiver process by offering public comment on a proposed application. HHS guidance indicates that all feedback received during the initial statewide public comment period must be taken into consideration before the final application is submitted for federal review. Title V can use this opportunity to weigh in on the proposed changes and the particular effects they will have on MCH populations. With regard to CYSHCN specifically, Title V can work to convene family leaders to gauge their reactions to the state's proposed waiver and respond accordingly.

1332 waivers provide considerable flexibility to states, allowing them to rebrand the ACA to meet their specific needs. The possibilities are expansive, but all proposals are subject to the coverage and fiscal protections discussed above. States must consider a number of factors before submitting a 1332 waiver application. Specifically, they should think strategically about what reforms might be possible without pursuing this specific waiver. In some cases, there may be simpler, less burdensome approaches to innovation, such as a section 1331 Basic Health Plan waiver.

As 2017 approaches, states will need to build in sufficient time for legislative, stakeholder and community engagement, as well as negotiations with the federal government over the intricate details of the application and review process. Substantial state capacity and engagement from the larger public health community will be critical to the development, acceptance and implementation of 1332 waiver proposals.

Resources

Center for Medicare and Medicaid Services (CMS): State Innovation Waivers

Center on Budget and Policy Priorities: Expanding Coverage for Parents Helps Children: Children's Groups Have a Key Role in Urging States to Move Forward and Expand Medicaid

Center on Budget and Policy Priorities: Understanding the Affordable Care Act's State Innovation (1332) Waivers

Commonwealth Fund: Innovation Waivers: An Opportunity for States to Pursue Their Own Brand of Health Reform

Commonwealth Fund: Innovation Waivers: As Federal Officials Flesh Out Key Requirements for Modifying the Health Law, States Tread Slowly

Community Catalyst: An Advocate's Guide to 1332 State Innovation Waivers

Community Catalyst: Section 1332 State Innovation Waiver Consumer Principles

Families USA: How Could a 1332 Waiver Affect Medicaid and CHIP?

Families USA: What Advocates Should Know About 1332 State Innovation Waivers

National Health Law Program: Section 1332 Waivers for State Innovation and Medicaid

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AMCHP Contact Information

This fact sheet is part of an AMCHP series of tools, documents and resources on implementation of the ACA and its impact on maternal and child health populations. For more information, please visit the National Center for Health Reform Implementation. All AMCHP staff can be reached by phone at (202) 775-0436.