Take Action Using Section 1332 Waivers — What States Need to Know

Understanding Section 1332 Waivers

The Patient Protection and Affordable Care Act (PPACA) reduced the number of uninsured Americans, but it introduced significant challenges for consumers, taxpayers, and states. In addition to high premiums and limited coverage options, other challenges include:

- Consumers who choose to purchase coverage through the Exchange are limited in the coverage choices and provider networks available through the Exchange. From 2013 to 2017, individual health insurance premiums increased by 105%, and many health insurers exited the market, reducing competition and consumer choice.[i]
- Enrollment by younger consumers, who are generally healthier, may be lower than other groups, which may be driving up premiums for everyone – in 2017, 15.6% of adults ages 26-34 were uninsured, the highest of any age group.[ii]
- While coverage remained affordable for those who qualified for premium tax credits (PTC) – those between 100% and 400% of the Federal Poverty Level (FPL) – in many cases it became less affordable for those who don't qualify for PTC. This has led to many unsubsidized individuals leaving the individual market. From 2017 to 2018, over 24% of enrollees nationwide who didn't receive PTC left the market.[iii] Further, when the subsidy abruptly ends at 400% of the FPL, this so called "subsidy cliff" discourages people from working and earning more.

Innovation Through State Relief & Empowerment Waivers Can Address Challenges Caused by PPACA

Section 1332 of the PPACA allows states to seek waivers of certain PPACA requirements to develop innovative and individualized state solutions and create alternatives to address local market challenges, subject to approval by the Department of Health and Human Services (HHS) and the Department of the Treasury (collectively, the Departments). Waivers must provide access to quality health care that is at least as comprehensive and affordable as would be provided absent the waiver, must provide coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and must not increase the federal deficit. A State Relief & Empowerment Waiver (also referred to as a state innovation waiver or section 1332 waiver) could allow states to:

- Establish and subsidize health plan types that may be more affordable and better address local and regional characteristics and consumer needs. For example, a state may subsidize health plans not offered through the Exchange or expand the availability of catastrophic plans.
- Consider innovative ways to address the costs facing individuals with expensive medical conditions through new specialized chronic care plans—not only to improve care for those individuals, but to lower premiums for healthier consumers who purchase coverage in the individual market.
- Design and implement new alternatives to the PPACA's premium subsidy structure to better meet individual market needs, encourage unsubsidized individuals to stay enrolled in coverage, and bring more young and healthy enrollees into the individual market. For example, states can explore creating a flat, age- and income-adjusted state tax credit that greater supports younger people.

State Relief & Empowerment Waivers – Legislative Authority Component

States must have state authority or enact a state law to apply for and implement a State Relief & Empowerment Waiver. This can happen in two ways and we encourage states to talk to the Departments: (1) a state can enact legislation or (2) under certain circumstances, a state can use its existing statutory authority to enforce the PPACA and issue a regulation or executive order.

Pass–Through Funding Available to States

If a state's waiver is approved and results in savings to the federal government for PTC or small business tax credits, the state can receive those savings (pass-through funding) and use them to help fund the cost of implementing the state waiver program. As an example, through innovative reinsurance waivers and combined with state funding, certain states have collectively already received over $1 billion in federal funds to carry out State Relief & Empowerment Waivers. This pass-through funding has contributed to lower premiums for people in the individual health insurance market, resulting in premium savings of between 8% and 30% for residents in states with approved waivers.

Maintaining Protections for People with Pre-Existing Conditions

The PPACA's pre-existing condition protections cannot be waived. State Relief & Empowerment Waivers do and will continue to be evaluated to make sure that any state waiver plan continues to provide protections for consumers including those consumers with pre-existing conditions.

[i] Individual Market Premium Changes: 2013 – 2017. HHS Office of The Assistant Secretary for Planning and Evaluation (ASPE) .
[ii] Berchick, Edward R., et al. Health Insurance Coverage in the United States; 2017. United States Census Bureau, September 2018.
[iii] Trends in Subsidized and Unsubsidized Enrollment. CMS, August 2019.

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