1332 Waivers

THE FUNDAMENTALS
What Can be Waived?

States may request waivers from HHS and the Treasury Department of certain requirements of the Affordable Care Act (ACA), effective 01/01/2017

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.
A state waiver application must satisfy four criteria to be granted

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.
What Can’t be Waived?

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 medical history. States are precluded from waiving rules that guarantee equal access at fair prices for all enrollees.
Coordination with Other Waivers

Section 1332 waivers can be coordinated with Medicaid and Medicare waivers, which may create opportunities for states to address differences among federal programs that may impede efforts to develop a seamless coverage continuum or to pursue multi-payer delivery system reform.

1332 Waiver

ACA requires that HHS and Treasury coordinate their review of section 1332 waivers with existing waiver authority under federal law.

1115 Waiver - Medicaid

HHS may waive Medicaid requirements if doing so is “likely to assist in promoting the objectives” of the Medicaid statute.

Medicare waivers

HHS is permitted to modify Medicare payment to test methods to improve efficiency of the Medicare program.

A state may submit a single application to the Secretary for a waiver under 1332 and other existing Federal waivers (e.g. 1115). 42 CFR sec. 155.1302
Waiver Process and Timeline

- **Start**
  - Consider state goals and policy priorities for 1332 waiver
  - Secure state authority
  - Engage key stakeholders

- **60 Days**
  - Hold required pre-application hearings

- **3 Months**
  - Submit waiver application to HHS and Treasury

- **6 Months**
  - Application approved by HHS and Treasury
  - Implementation Begins (if Year 1 falls after January 1, 2017)

- **Year 1**
  - This assumes a 6 month review & approval process by HHS & Treasury; some waivers may take considerably longer
  - Begin submitting quarterly reports

- **Year 2**
  - Waiver is renewed

- **Year 6**
  - Begin submitting annual reports

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Catching the Next Waiver: State Flexibility, Section 1332 and “Super Waivers” | Manatt, Phelps & Phillips, LLP
Thank You!

Deborah Bachrach
DBachrach@manatt.com
212.790.4594