Affordable Care Act Section 1332: Understanding the Potential of State Innovation Waivers

Beginning in 2017, states will have an avenue by which to fundamentally alter their methods for offering and regulating public health insurance. Section 1332 "State Innovation Waivers" were included in the Patient Protection and Affordable Care Act (ACA) to allow states the opportunity to pursue innovative methods of providing access to affordable, high quality health care while still maintaining the key elements of the ACA. However, there is growing concern over the potential scope of these waivers and their ability to significantly alter how states offer affordable insurance coverage through the marketplace.

Section 1332 waivers only apply to marketplace insurance. They do not apply to other federal health programs like Medicare or Medicaid. These five-year waivers allow states to customize requirements of federal health coverage to state and local preferences. Of particular concern is that states may attempt to utilize 1332 waivers in conjunction with Medicaid 1115 waivers to form a "super waiver" that would bring about wholesale changes to state health coverage options, affecting individuals at all levels of income. Many states have already begun laying groundwork to use the 1332 waivers in 2017.

What can states modify?

Section 1332 waivers allow states to tailor a number of health reform options to local market conditions and preferences. The following are provisions that may be modified or waived.

- **Health Insurance Marketplaces and Qualified Health Plans**: States may replace their marketplaces or supplant the qualified health plan certification process with alternative methods. Alternatives can include: replacing the certification process with state-based regulation; replacing the public marketplace with one or more private exchanges; or allow funding for the purchase of compliant coverage from a private insurer.
- **Benefits and Subsidies**: States may modify the essential health benefits (EHB) requirements on marketplace plans which ensure coverage of a comprehensive array of benefits. States may also make alterations to the rules governing the calculation and availability of subsidies that help reduce deductibles, copayments and overall annual costs to the consumer. Alternatives can include: adjusting tax credits based on quality metrics; expanding or contrasting subsidy eligibility; or creating an alternative benefit/subsidy system.
- **Individual Mandate**: States may modify or altogether eliminate the requirement that individuals maintain health insurance coverage.
- **Employer Mandate**: State may modify or altogether eliminate the requirement that large employers offer affordable health coverage to full-time employees.

What can states NOT modify?

Many important provisions of the Affordable Care Act are not subject to Section 1332 and therefore are cannot be waived or altered. The following are provisions that may not be restricted nor waived by states.

- **Nondiscrimination protections**: States may not waive the nondiscrimination protections of the ACA that prohibit insurance carriers from denying coverage or increasing premiums for individuals based on their medical history. States must maintain protections for individuals with pre-existing conditions.
- **Ban on annual or lifetime coverage limits**: States may not add lifetime limits nor annual use limits to health plans.
- **Coverage of dependents up to age 26**: Waivers may not eliminate or reduce the age limit for health coverage for adult dependents up to age 26.
- **Guaranteed issue and community rating:** States must maintain provisions to ensure that health plans do not use actual or expected health status to set group premium rates. Additionally, health plans offering insurance in any particular state must accept and insure all individuals in that state regardless of health status.

Requirements to Obtain a 1332 Waiver

State Innovation Waivers must adhere to the four following criteria:

- **Coverage must remain comprehensive**. States must still provide coverage that is "at least as comprehensive" as health coverage before the waiver.
- **Coverage must remain affordable**. States must provide cost-sharing protections and insurance coverage options to keep insurance affordable.
- **A comparable number of people must have coverage**. Plans must not limit coverage availability.
- **No increases to the federal deficit**. Plans must remain at least budget neutral.

What are states doing now?

While protections are in place to ensure the coverage of millions of Americans, concerns remain that Section 1332 waivers could undo much of what the Affordable Care Act set out to accomplish. Each state has the ability to implement major changes through the use of these five-year waivers, potentially unraveling the progress and growth that has been achieved since the ACA's enactment in 2010. These changes could negatively impact consumers' ability to find and purchase quality health insurance, eliminate staples of the ACA like qualified health plans and essential health benefits, as well as move all insurance plans to the private market.

While state waivers cannot be approved until January 2017, some states have already begun laying the groundwork for submission and implementation. Rhode Island, California, and Minnesota have all passed state legislation authorizing the utilization of these waivers. In Hawaii, state officials have convened a taskforce to evaluate whether or not a 1332 waiver could help expand access to health coverage for the uninsured population in their state. In Vermont, state officials have discussed using the waiver to establish a universal single-payer health care system. And in Arkansas, the Governor has signaled the future of the states' Medicaid expansion through private insurance.

The National Council is monitoring this situation to ensure all individuals have access to affordable, high-quality health care coverage.

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