Steps for States Considering a 1332 Waiver

May 2019
1332 Pre-Application Process Overview

Identify Policy Problem and Solution
Strategy and Coalition Building
Data Gathering and Actuarial Analysis
Legislative Authority (if complete <180 days to determine approval/disapproval)
Preparing the Application
State Public Comment

Note: These steps are illustrative as some steps are happening simultaneously or in different order depending on the state.
States examine successes, issues, or potential problems in the health insurance market related to:

– Issuer participation?
– Plan choices?
– Affordability?
– Risk pool demographics?

Solutions:
– Are there policy solutions through a 1332 waiver? Or a state level approach?

*Remember it’s not too early to talk to the Departments at this point! States are encouraged to reach out to the Departments by emailing StateInnovationWaivers@cms.hhs.gov for assistance in formulating an approach that meets the requirements of Section 1332.
• Developing a waiver idea and coalition building?
  – Who are the stakeholders impacted to discuss with (i.e. advocates, issuers, legislators, providers, hospitals)?
  – Working group approach vs. specific proposal?
  – Timing Considerations: What is the timeline for the waiver or policy change to be effective? Does this impact rate setting and plan submission timelines? Are there operational considerations?
Step 3: Data Gathering and Actuarial Analysis

• Who will do the analysis?
  – Is a contract needed?

• Collecting Data
  – Is data needed from issuers?
    • Potential request for data from issuers (for example: claims, enrollment, PTC)
  – What data is publicly available that could be useful?
Step 3: Data Gathering and Actuarial Analysis

- Complete Actuarial and Economic Analysis
- Resource: Pass-Through Funding Tools and Resources Section of 1332 website
Step 4: State Legislative Authority

• **Note:** States can simultaneously pursue legislative authority to pursue a waiver while developing and drafting a waiver application and actuarial analysis.

• Questions to Consider:
  – What authority does a state have in law to implement the PPACA?
  – What additional authority is needed to implement the specific state plan (if any)?
  – What authority can be used through an Executive Order or Regulation?
  – Is state funding necessary to implement the state waiver plan?

• Legislative Approaches:
  – General authority to implement a waiver vs. authority for a specific waiver plan?
  – Pursing one piece of legislation or multiple vehicles to implement a state plan?
  – Including specifics of a program, a range, or are specifics determined at a later date?
  – Flexibility to adjust the waiver plan?
  – Entity to implement the waiver plan?
  – Timeline for authority and/or funding?
Step 5: Preparing the State Application

- Public notice and comment period
- Enacted state legislation
- List of provisions of the PPACA to be waived
- Information sufficient to determine compliance with guardrails, with actuarial support and economic analysis
- 10-year budget plan
- Implementation plan
- Reporting targets
- Principles discussion
Step 6: State Public Comment Process

- Post draft application for state public comment period (30 days minimum and 2 public hearings minimum + tribal consultation if the state has Federally-recognized tribes)
- During this time the state is recommended to be in contact with the Departments about the waiver and timeline for submission.
1332 Application Process Overview

Application Submitted
Completeness Review
(<45 days to determine if complete/incomplete)
Application Review
(if complete <180 days to determine approval/disapproval)
Application Approval
Step 7: Application Submission

• Completeness Review:
  – HHS/Treasury will conduct a preliminary review of the application for completeness within 45 days of receipt of the application.

• Federal Comment Period:
  – Complete applications will have a 30 day federal comment period.

• Application Review:
  – The final decision of HHS/Treasury will be issued no later than 180 days after the application completeness determination is made.