Overview of Section 1332 State Relief and Empowerment Waiver Concepts

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CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

Section 1332 State Relief and Empowerment Waiver Concepts: Overview

CMS released four waiver concepts for states' use to promote more affordable, flexible health insurance coverage options through State Relief and Empowerment Waivers. CMS is providing states with these waiver concepts in an effort to spur innovation, reduce burden for states with potentially limited policy resources or legislative schedules, and to illustrate how states might take advantage of new flexibilities provided in recently released guidance. The waiver concepts can be utilized by individual states to improve their health care markets. The four concepts are:

- State-Specific Premium Assistance
- Adjusted Plan Options
- Account-Based Subsidies
- Risk Stabilization Strategies

As with all waiver requests, a state must ensure that the waiver plan meets the four statutory guardrails relating to comprehensiveness, affordability, coverage, and federal deficit neutrality. For approved waivers, if the Departments determine that the waiver is expected to reduce federal spending on Premium Tax Credits (PTC), the state will receive federal pass-through funding for the purpose of implementing the section 1332 state waiver plan.

Section 1332 Waiver Concepts: State-Specific Premium Assistance

Policy

- States could consider options to create and implement a new state subsidy structure that changes the distribution of subsidy funds compared to the current federal PTC structure. A state may design a subsidy structure that meets the unique needs of its population in order to provide more affordable healthcare options to a wider range of individuals or to address structural issues that create perverse incentives, such as the subsidy cliff.
  - A new state subsidy structure might redefine the amount of financial assistance provided as a state subsidy, such as a state tax credit, or redefine the populations eligible for such financial assistance, or both.
- For approved waivers, if the Departments determine that the waiver is expected to reduce federal spending on PTC, the state will receive federal pass-through funding for the purpose of implementing the section 1332 state waiver plan and help fund the state subsidy program.

Section 1332 Waiver Concepts: State-Specific Premium Assistance

Implementation

- States would receive waiver of the PTC for plans offered through the Exchange in the state (section 36B of the Code and section 1401of the PPACA, both waived in entirety), in addition to provisions around Qualified Health Plans (QHPs), such as section 1301(a) and the Exchange's operations, section 1311(d)(2)(B)(i). Under this approach, in place of the PTC, states could develop a state premium subsidy program. This would likely be easier for existing State-based Exchanges (SBE) to operationalize using existing SBE infrastructure since there are already connections to federal data sources (e.g., Department of Homeland Security and the Social Security Administration).
- Under this concept, a state could either have an SBE, or seek a waiver of the requirement to have an Exchange in the state. Applications for state financial assistance would be administered by the state and the state would assume all responsibilities associated with providing financial assistance.
  - One implementation option for states would be to perform the eligibility determination using existing Medicaid or CHIP system connections to federal data sources in support of the state's program. Note: States will need to confirm authorization.
  - A second implementation option for states would be to perform the eligibility determination using authorities and technologies currently in place through the FFE connections to federal data sources.

Section 1332 Waiver Concepts: State-Specific Premium Assistance

Administrative Expenses

- States may use pass-through funding associated with waived PTC to implement the state plan and help fund an alternative state subsidy program. Any additional costs to fund the state subsidy program would be the state's responsibility. For example,
  - If states perform the eligibility determination using existing Medicaid or CHIP system connections to federal data sources*, very few costs would be incurred by CMS and the state would cover these costs; the state would be treated by CMS in a similar manner as a state operating its own Exchange with a redirect to the independent state website.
  - If states perform the eligibility determination using technologies currently in place through the FFE's connections to federal data sources, costs would be incurred by CMS to support up-front technical changes and ongoing processing of citizenship or immigration-related data matching issues (DMIs). The state will be responsible for reimbursing CMS for both types of costs incurred as part of the section 1332 state waiver program.

* 4 Per 2 CFR 200 (previously OMB-A-87), cost allocation principles would apply unless otherwise waived.

Section 1332 Waiver Concepts: Adjusted Plan Options

Policy

- States could have the flexibility to provide state financial assistance for non-QHPs, potentially increasing consumer choice and making coverage more affordable for individuals.
- States also could choose to expand the availability of catastrophic plans beyond the current eligibility limitations by waiving section 1302(e)(2) of the PPACA, for example, to make them available to a broader group of individuals.
- With the Adjusted Plan Options waiver, states may be able to increase consumer choice and affordability by allowing consumers to use a state subsidy towards catastrophic plans, individual market plans that are not QHPs, or plans that do not fully meet PPACA requirements.

Section 1332 Waiver Concepts: Adjusted Plan Options

Allow state financial assistance for non-QHPs

- States should consider what, if any, state requirements there will be for the state subsidy to apply to non-QHPs and what types of plans would be eligible for the state subsidy. A state would have to administer a state-specific premium assistance program if it wants to offer a subsidy to non-QHPs.
- In implementing this option, states could allow enrollment to occur directly with participating issuers or web broker websites; similar to how small businesses enroll in FF-SHOP plans, how individuals are currently enrolled when they purchase coverage off-Exchange, and the direct enrollment process for consumers signing up for individual market coverage through Exchanges that use HealthCare.gov. To activate subsidies, consumers would provide a voucher or other proof of subsidy eligibility when enrolling.
- Another implementation option is for states is to design a system where enrollment would occur through a specific website separate from the HealthCare.gov website and back-end platform used by the FFE.

Section 1332 Waiver Concepts: Adjusted Plan Options

Allow non-QHPs to be sold on the existing Exchange and/or expand the availability of catastrophic plans

- States with FFEs or with State-based Exchanges that rely on the federal platform (SBE-FPs) may elect to make plan oversight changes that can provide additional flexibility while maintaining the technical requirements to continue use of the HealthCare.gov platform.
- In implementing this option, a state may want to allow issuers to sell plans that do not meet all QHP certification standards by waiving some or all of section 1311(c) of the PPACA, while still making it available through HealthCare.gov.
- Regarding catastrophic plans, states could expand the availability of catastrophic plans beyond the current eligibility limitations by waiving section 1302(e)(2) of the PPACA, for example, to make them available to a broader group of individuals. States could also determine whether or not PTC (and APTC) could be applied to such plans.
- Technical changes to the federal Exchange would be necessary in order to support changes to catastrophic plan eligibility or the application of APTC to non-QHPs.

Section 1332 Waiver Concepts: Account-Based Subsidies

Policy

- States could have the flexibility to direct public subsidies into a defined-contribution, consumer-directed account that an individual uses to pay health insurance premiums or other health care expenses.
- The account could be primarily funded with pass-through funding made available by waiving the PTC (section 36B of the Code) or the Small Business Tax Credit (SBTC) (section 45R of the Code), along with any additional state funds to implement the 1332 waiver plan.
- One option is to use subsidies as a contribution towards funding a defined-contribution, consumer-directed Health Expense Account (HEA).
- States will need to create their own subsidy structure, consider which plan options will be offered, and how to aggregate funding from various sources.

Section 1332 Waiver Concepts: Account-Based Subsidies

Implementation

- In the HEA option, states could request to waive federal laws relating to PTC (section 36B of the Code and section 1401 of the PPACA) to establish a new subsidy program and also fund HEAs.
- States could continue using the current Exchange enrollment platform and plan certification, create a new platform, or waive the PPACA's Exchange and QHP provisions and rely entirely on the private market.
- In designing HEAs, states would need to consider a number of design elements and issues including contribution amount, restrictions on the use of funds, family account structure, account administrator, HEA savings, and tax implications.

Section 1332 Waiver Concepts: Risk Stabilization Strategies

Overview

- In the risk stabilization strategies waiver component, states can consider ways to address the costs of individuals with expensive medical conditions to mitigate the impact of those expenses on people who purchase coverage in the individual market.
- For example, states can implement a state-operated reinsurance program or high-risk pool by waiving the single risk pool requirement under section 1312(c)(1) of the PPACA, which could be coupled with other waiver idea options discussed.
  - Reinsurance programs have lowered premiums for consumers, improved market stability, and increased consumer choice.

Section 1332 Waiver Concepts: Risk Stabilization Strategies

Reinsurance Policy

- Reinsurance programs compensate insurers for people with significant medical expenditures during a year, lowering premiums in the individual market (both inside and outside the Exchange). Reinsurance payments are based on actual costs, so along with high-risk individuals it also helps mitigate insurer losses for low-risk individuals who may have unexpectedly high costs (such as costs incurred due to an accident or sudden onset of an illness).
- One option for states is a claims cost-based reinsurance program where issuers are reimbursed for a portion of the costs of enrollees whose claims exceed a certain threshold (i.e. the attachment point).
- Another option is a conditions-based reinsurance program where insurers are reimbursed for costs of individuals with one or more of a list of pre-determined high cost conditions.
- A third option, is a hybrid where the state could implement a reinsurance program that is both conditions-based and claims based, where issuers are reimbursed for the costs (or a fraction of costs) of individuals within a specified range with one or more of a list of pre-determined high-cost conditions.

Section 1332 Waiver Concepts: Risk Stabilization Strategies

Reinsurance Implementation

- Any new reinsurance program will require new activities both for the state and for carriers. Initially, there will be one-time start-up costs. Once a program is under way, there will be operating and oversight expenses of several kinds. Set-up activities include: creating a governance structure and mechanisms (e.g., board, plan of operations); contracting for administrative services and systems; acquiring claims and accounting software; entering into contracts for professional services such as law and accounting; hiring or arranging for actuarial support; and establishing budgetary and financial systems, including holding of fiscal reserves, and arranging for banking services.
  - For a conditions-based or hybrid model, there may need to be more analysis to look at claims and identify which conditions are the greatest cost-drivers and could be ceded to the reinsurance program, making it slightly harder to administer than a claims-based model.
- States should consider whether they want to do a prospective or retrospective reinsurance model.

Section 1332 Waiver Concepts: Risk Stabilization Strategies

Reinsurance Administrative Expenses

- Administrative costs should not be as large as a percentage of claims payouts for a reinsurance program compared to a high risk pool. From prior experience, we estimate that state administrative costs would amount to at most an additional 1 to 3 percent of claims costs, depending upon how active administrators are. States can use pass-through funding towards operation of a reinsurance program under their waiver plans.
- To help states in the start-up years of implementing their reinsurance program, CMS is offering the following flexibilities for states to administer their reinsurance program
  - Transitional assistance for administering a reinsurance program: States can request that the federal government, for a fee, calculate issuers' state RI payments based on the state RI parameters as part of the state's waiver plan.
  - Assistance with a state database for reinsurance program: CMS has made the EDGE server software that issuers use in relation to CMS's risk adjustment program available for states to use for developing their own database for the state's reinsurance program.

Section 1332 Waiver Concepts: Risk Stabilization Strategies

High-Risk Pool Policy

- In a traditional high-risk pool, individuals who are at risk of high-cost conditions are covered through a separate pool outside of the individual market, and funded by high-risk pool premiums and external funding, which is most often necessary. In a risk pool that is invisible to the individual, individuals who qualify for the high-risk pool enroll in an individual plan offered by a commercial, state-licensed health insurance issuer, but their claims (either total claims or claims at certain specific attachment points) are subject to payment using the additional funding available through the risk pool arrangement. Insuring the high losses incurred by such individuals through a separate pool prevents the need to raise average premiums for commercial consumers to offset those losses.
- Because consumers cannot be required to purchase coverage only from a traditional high risk pool under guaranteed availability rules, states should consider whether the plan in the high-risk pool would be attractive to high-cost consumers as they design their high-risk pools.

Section 1332 Waiver Concepts: Risk Stabilization Strategies

High-Risk Pool Implementation

- A traditional high-risk pool would require new activities both for the state and for health insurance issuers.
- For a traditional high-risk pool the state would need to make sure there's an eligibility/enrollment system, adequate provider networks, claims processing and operations, and customer service and communications system in place. The high-risk pool would receive all premium dollars and pay all claims for its members. Assuming the high-risk pool uses a health insurance issuer to process claims and perform other functions, the issuer would receive a TPA fee as sole compensation, and would assume no risk. States would also need to determine a governance structure, requirements for contracting with carriers, etc.
- In the context of a section 1332 waiver, states may be able to leverage existing high-risk pool authority, particularly if a high-risk pool is still operating.

Section 1332 Waiver Concepts: Risk Stabilization Strategies

High-Risk Pool Administrative Expenses

- The administrative cost for high risk pools established by the state in lieu of the federal PCIP program over the life of the program was about 5% of total spend (vs. 7% for the federal PCIP), but the range was between 2% - 15%. Administrative costs do typically go down over the life of the program.
- States should evaluate if additional state funding is required to fully fund the state plan.

Additional Resources

- **CCIIO 1332 website**

https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-.html

Note: New section on Pass-through Funding Tools and Resource Section on the website

- **2012 Regulations Section 1332 waivers (45 CFR 1300-1328)**

https://www.ecfr.gov/cgi-bin/text-idx?SID=c3a0fa80fd80ad165d9f7d9af7ecef4f&mc=true&node=sp45.1.155.n&rgn=div6

- **Section 1332 State Relief and Empowerment Waiver Concepts – Discussion Paper November 29, 2018**

https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Waiver-Concepts-Guidance.PDF

- **Guidance- October 2018**

https://www.federalregister.gov/documents/2018/10/24/2018-23182/state-relief-and-empowerment-waivers

Note: The guidance has a 60 day comment period which ends December 24, 2018.

- **Slide Deck - Overview of 1332 guidance for State Relief and Empowerment Waivers (November 2018)**

https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/State-Relief-Empowerment.PDF

- **Secretary Letter to States - March 2017**

https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter_508.pdf

- **Checklist for States on State Reinsurance Waivers - May 2017**

https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf

QUESTIONS?

- We encourage states interested in applying for Section 1332 waivers to reach out to HHS and Treasury (the Departments) as soon as possible.
- Email stateinnovationwaivers@cms.hhs.gov for assistance in formulating and enacting a plan that meets the requirements of Section 1332.