State Health Care Reform Services
Section 1332 Waivers

The Section 1332 State Innovation Waivers present a landmark opportunity for state-specific approaches to providing healthcare coverage to the uninsured

Background:

States may apply for Affordable Care Act (ACA) Section 1332 Waivers for State Innovation to implement variations of the American Health Benefits Exchange as it was authorized under ACA Title I. 1332 waivers may be implemented any time after January 1, 2017. A state may further pursue redefining the relationship between the Exchange and Medicaid by filing a 1332 waiver that is coordinated with the terms of a Medicaid 1115 waiver. In this way, a state could broadly redefine and reshape its approach to providing healthcare access to all residents with incomes below four times the poverty level.

While the potential reach of Section 1332 waivers appears to be broad, it should be noted that approval of these waivers is entirely dependent on successful state negotiation with the US Department of Health and Human Services. Because 1332 waivers are new, precedent for HHS approvals has not yet been established.

However, the language in Section 1332 of the Affordable Care Act indicates states may waive Health Exchange provisions of the ACA to develop innovative policy and program alternatives. Examples of regulatory areas that can be waived include individual and Small Business Health Options Program (SHOP) exchange structures, premium tax credit and cost-sharing reduction payments, the individual mandate, and employer responsibility requirements.

Alternative approaches can be funded through a re-allocation of the equivalent federal funding that would have been paid to the covered population for premium tax credits, cost-reduction payments, and small business tax credits. The state must demonstrate that the alternative approach is at least as comprehensive as ACA coverage, as affordable as ACA coverage, covers at least as many people, and will not increase the federal deficit.

1332 Waivers could be leveraged by states to work towards reducing healthcare costs and improving access and quality through innovative state-centric methods. For example, a state might attempt to use this authority to better integrate payer systems, initiatives focused on prevention of prevalent state health issues, and alternatives for employer-mandated coverage. Other examples include:

- Integrate Medicaid, Children’s Health Insurance Program (CHIP), and other public health programs. A premium assistance program offered through the exchange is an alternative to
traditional ACA Medicaid expansion. (Note: Premium assistance programs approved through Centers for Medicare and Medicaid Services (CMS) were authorized via Medicaid 1115 waivers but could be transitioned to work in concert with an ACA 1332 Waiver in 2017).

- Merge exchanges with other health insurance markets, such as university-based plans, public employee health plans, and union-negotiated (SEIU) plans and allow issuers to select markets in which to participate.
- Reform employer mandates and reallocate employer tax incentives towards employee purchase of plans on the individual marketplace.
- Segment the high risk market and manage care of sicker individuals through high risk pools, promoting lower health insurance costs.
- Incentivize or mandate individual responsibility initiatives in publically-funded programs, such as shared savings initiatives through Health Savings Accounts.

How can PCG help your state take advantage of the flexibilities offered through the State Innovation Waivers?

Public Consulting Group (PCG) has provided effective, results-driven management consulting to state agencies for more than 25 years and now leads the field in providing consulting services to help state agencies implement the Affordable Care Act (ACA). PCG is in its fifth year of assisting states in planning and implementing Health Insurance Marketplaces. In fact, nearly 50% of states have engaged with PCG for assistance with health care reform initiatives since the ACA was passed in March 2010.

Stakeholder Engagement
Successful program changes require commitment from key stakeholders affected by changes to health policies, programs, and processes. PCG has proven experience in facilitating frequent and meaningful collaboration with state and community leaders, consumers, advocacy organizations, insurance issuers, business owners, state legislative contacts, and other stakeholders. PCG has worked with countless stakeholders to present policy options, facilitate discussions, incorporate feedback, and help develop consensus around policy solutions.

State Health Policy Analysis and Development
PCG understands that one size does not fit all in state health policy. Our seasoned consultants and subject matter experts focus on the public health priorities of our clients and consider how they can be addressed and improved through a Section 1332 Innovation Waiver. Through policy research and analysis, market research, and data analysis, PCG can assist the state in developing cost-effective health policies consistent with federal rules. This includes drafting state legislation and legislative briefing materials and communicating the ways that proposals would benefit state residents.
Program Redesign Consulting

Section 1332 Innovation Waivers give states a chance to restructure public health programs in order to produce state-specific and cost-effective health systems that best meets the needs of consumers. PCG has broad experience serving clients in programs such as Medicaid, CHIP, and Health Insurance Marketplace models. Our team is uniquely qualified to help states manage program changes including changes to business process, organizational structure, and IT systems.

Waiver Development

A 1332 Innovation Waiver Proposal must meet federal requirements and substantiate that health care coverage under the waiver plan is at least as comprehensive as ACA coverage, is as affordable, and covers just as many people as the individual marketplace. PCG has been working with Medicaid agencies to successfully implement 1115 Waivers for many years. We can assist states in all aspects of the waiver development, including drafting the waiver language, demonstration of budget neutrality, discussions with CMS, facilitating the public comment period, and development of waiver evaluation plans.

Below, PCG provides the actual text of Section 1332 of the Affordable Care Act. We have inserted interpretations and comments in bolded, red, italicized font to help our state clients understand the parameters of the law.

**Text and PCG Comments: Affordable Care Act Section 1332**

(a) APPLICATION.—
(1) IN GENERAL.—A State may apply to the Secretary for the waiver of all or any requirements described in paragraph (2) with respect to health insurance coverage within that State for plan years beginning on or after January 1, 2017. Such application shall—
   (A) be filed at such time and in such manner as the Secretary may require;
   (B) contain such information as the Secretary may require, including—
      (i) a comprehensive description of the State legislation and program to implement a plan meeting the requirements for a waiver under this section; and (ii) a 10-year budget plan for such plan that is budget neutral for the Federal Government; and (C) provide an assurance that the State has enacted the law described in subsection (b)(2).
(2) REQUIREMENTS.—The requirements described in this paragraph with respect to health insurance coverage within the State for plan years beginning on or after January 1, 2014, are as follows:
   (A) Part I of subtitle D.
   (B) Part II of subtitle D.
   (C) Section 1402.

*PCG Comment: This means that the State can obtain waivers on the ACA requirements starting in 2017 related to the legal definition of Qualified Health Plans (QHPs), Essential Health Benefits (EHBs), Advance Premium Tax Credits (APTCs), Cost Sharing Reductions*
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(CSRs), the individual mandate, employer responsibility payments and the functions of an Exchange. HHS will not review the application unless the State has enacted a law authorizing its alternative program (see also (b)(2) as noted in comment #6 below).

(3) PASS THROUGH OF FUNDING.—With respect to a State waiver under paragraph (1), under which, due to the structure of the State plan, individuals and small employers in the State would not qualify for the premium tax credits, cost-sharing reductions, or small business credits under sections 36B of the Internal Revenue Code of 1986 or under part I of subtitle E for which they would otherwise be eligible, the Secretary shall provide for an alternative means by which the aggregate amount of such credits or reductions that would have been paid on behalf of participants in the Exchanges established under this title had the State not received such waiver, shall be paid to the State for purposes of implementing the State plan under the waiver. Such amount shall be determined annually by the Secretary, taking into consideration the experience of other States with respect to participation in an Exchange and credits and reductions provided under such provisions to residents of the other States.

PCG Comment: This means that the State can, under a section 1332 waiver, be federally funded up to the aggregate amount of dollars that otherwise (without the waiver) would have been paid out for the State in Advance Premium Tax Credits, Cost Sharing Reductions (CSRs), and small business tax credits. The pass through amount will be calculated annually by HHS, not the State.

(4) WAIVER CONSIDERATION AND TRANSPARENCY.—
(A) IN GENERAL.—An application for a waiver under this section shall be considered by the Secretary in accordance with the regulations described in subparagraph (B).
(B) REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations relating to waivers under this section that provide—
(i) a process for public notice and comment at the State level, including public hearings, sufficient to ensure a meaningful level of public input; (ii) a process for the submission of an application that ensures the disclosure of—
(I) the provisions of law that the State involved seeks to waive; and
(II) the specific plans of the State to ensure that the waiver will be in compliance with subsection (b);
(iii) a process for providing public notice and comment after the application is received by the Secretary, that is sufficient to ensure a meaningful level of public input and that does not impose requirements that are in addition to, or duplicative of, requirements imposed under the Administrative Procedures Act, or requirements that are unreasonable or unnecessarily burdensome with respect to State compliance;

PCG Comment: The 2/27/12 HHS regulations address the procedural issues enumerated above; they do not impose any substantive restrictions or conditions on HHS granting of waivers beyond those stated in section 1332. There is nothing in section 1332 or the regulations that limits waivers to states that have state-based exchanges, or any exchange at all, if the state proposes a plausible alternative approach toward providing coverage under the waiver and can demonstrate to HHS that all conditions are met.

(iv) a process for the submission to the Secretary of periodic reports by the State concerning the implementation of the program under the waiver; and (v) a process for the periodic evaluation by the Secretary of the program under the waiver.
(C) REPORT.—The Secretary shall annually report to Congress concerning actions taken by the Secretary with respect to applications for waivers under this section.

(5) COORDINATED WAIVER PROCESS.—The Secretary shall develop a process for coordinating and consolidating the State waiver processes applicable under the provisions of this section, and the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Social Security Act, and any other Federal law relating to the provision of health care items or services. Such process shall permit a State to submit a single application for a waiver under any or all of such provisions.

**PCG Comment:** The 2/27/12 HHS regulations say that HHS will coordinate with IRS regarding any section 1332 waiver applications that involve IRS; the State need not separately apply to IRS or deal with separate requests for additional information from IRS.

(6) DEFINITION.—In this section, the term “Secretary” means—
(A) the Secretary of Health and Human Services with respect to waivers relating to the provisions described in subparagraph (A) through (C) of paragraph (2); and
(B) the Secretary of the Treasury with respect to waivers relating to the provisions described in paragraph (2)(D).

(b) GRANTING OF WAIVERS.—
(1) IN GENERAL.—The Secretary may grant a request for a waiver under subsection (a)(1) only if the Secretary determines that the State plan—
(A) will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) and offered through Exchanges established under this title as certified by Office of the Actuary of the Centers for Medicare & Medicaid Services based on sufficient data from the State and from comparable States about their experience with programs created by this Act and the provisions of this Act that would be waived;
(B) will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions of this title would provide;
(C) will provide coverage to at least a comparable number of its residents as the provisions of this title would provide; and
(D) will not increase the Federal deficit.

**PCG Comment:** The State must demonstrate to HHS, to HHS satisfaction, that the coverage that will be provided under the waiver is at least as comprehensive as that offered under the ACA; as affordable; covers at least as many persons; and will not increase the Federal deficit. All of the conditions must be demonstrated to be met, in HHS’ view, in advance.

(2) REQUIREMENT TO ENACT A LAW.—
(A) IN GENERAL.—A law described in this paragraph is a State law that provides for State actions under a waiver under this section, including the implementation of the State plan under subsection (a)(1)(B).

**PCG Comment:** As noted previously, the State law must be enacted in advance, before HHS will consider any waivers.

(B) TERMINATION OF OPT OUT.—A State may repeal a law described in subparagraph (A) and terminate the authority provided under the waiver with respect to the State.

(c) SCOPE OF WAIVER.—
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(1) IN GENERAL.—The Secretary shall determine the scope of a waiver of a requirement described in subsection (a)(2) granted to a State under subsection (a)(1).
(2) LIMITATION.—The Secretary may not waive under this section any Federal law or requirement that is not within the authority of the Secretary.
(d) DETERMINATIONS BY SECRETARY.—

(1) TIME FOR DETERMINATION.—The Secretary shall make a determination under subsection (a)(1) not later than 180 days after the receipt of an application from a State under such subsection.
(2) EFFECT OF DETERMINATION.—
(A) GRANTING OF WAIVERS.—If the Secretary determines to grant a waiver under subsection (a)(1), the Secretary shall notify the State involved of such determination and the terms and effectiveness of such waiver.
(B) DENIAL OF WAIVER.—If the Secretary determines a waiver should not be granted under subsection (a)(1), the Secretary shall notify the State involved, and the appropriate committees of Congress of such determination and the reasons therefore.
(e) TERM OF WAIVER.—No waiver under this section may extend over a period of longer than 5 years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State in writing with respect to any additional information which is needed in order to make a final determination with respect to the request.

PCG Comment: These provisions all relate to the scope and duration of the waiver, as well as state options to terminate the waiver.
State policy goals that may be advanced through a 1332 waiver, or combined 1115/1332 waiver, along with identification of legal provisions to be waived: