COUNCIL FOR AFFORDABLE
HEALTH COVERAGE

Untie States' Hands by Reforming Obamacare Waivers

Section 1332 of the *Affordable Care Act* (ACA) enables states to waive certain elements of the health care law – benefit requirements, enrollment periods, tax credits – if the state approves reforms that meet the same benchmarks.

At the Council for Affordable Health Coverage, we believe state-based reforms would be more impactful in stabilizing markets if the 1332 process worked better. Both the law itself and the Obama-era enforcement mechanism should be changed to promote lower costs, more robust coverage, and higher numbers of insured Americans with better risk profiles who are underrepresented in the current exchange markets.

- **Guardrails:** The current 1332 law requires that any state application meet guardrail protections for comprehensiveness, uninsured, affordability and deficit reduction or the application must be rejected. Waivers that worsen one category while improving the overall market and potentially benefiting more people are thus rejected under this inflexible standard. Congress should allow HHS to approve a 1332 application if the state can demonstrate the proposed reforms help more people than the status quo.

- **State Legislation:** Make a technical correction to clarify that existing state authority to regulate or stabilize the individual and small group markets suffices for the legislative requirement. New legislation should not be needed to meet the application requirements. This is likely the largest barrier facing states right now.

- **Timelines:** Shorten the timeframe for review, including by truncating the completeness review to 30 days rather than 45. We further recommend shortening the timeframe for review of a completed application to 100 days from 180 (or an alternative shorter time frame such as 90 or 120). We also suggest requiring the administration to begin reviewing portions it has deemed complete even if a state must revise another portion of the application (e.g. if the economic analysis is complete, the administration should begin reviewing it even if the actuarial table is not complete).

- **Model Templates:** Require the administration to complete model templates for certain common waiver policy applications (e.g. reinsurance), so that states can more easily create waivers and have a greater sense of certainty if the template is followed.

- **Deficit Neutrality:** Allowing for the inclusion of savings from a reduction in overall health spending (e.g. reduction in spending for uncompensated care and subsequent lower hospital costs from a reduction in the uninsured) to count toward the deficit neutrality provisions in the 1332 application.

- **Pass Through:** Similarly, allowing pass through funds to come from other areas of reductions in federal health spending, not just reductions in treasury funds related to subsidies.

- **Super Waivers:** Allow simultaneous submission of 1332, 1115, and/or 1915 waivers – or a “Super Waiver” – where the waivers would interact in such a way that the entire application would have to be budget neutral, rather than each individual waiver. See more information below concerning 1115 and 1915 waivers.

Congress and the administration should work together to create more flexibility for states to enact reforms that work for ther citizens.

Additionally, the administration should consider enacting the following changes, which CAHC does not believe would need to be subjected to a full rulemaking process with a public comment period:

Coverage

- Currently, coverage requirements must be met in each year the waiver is in effect. This is unreasonable and should be modified to require that requirements are met over the life of the waiver.
- Coverage conditions are required for specific subpopulations. Instead, these conditions should be deemed met if total coverage increases.
- If microdata is not going to be used, eliminate this provision from the enforcement rule.

Affordability

- The affordably requirement currently applies to its impact on all state residents regardless of coverage they would have absent the waiver requirement. This should instead apply to the change in affordability that occurs because of the waiver.
- Currently, the condition is not met if it has a disproportionate impact on people with large burden of spending, even if it benefits more people. This condition should be based on help for more people and high costs.
- "Excessive" cost sharing requirement should be clarified to stipulate that it does not apply to high-deductible health plans (HDHPs) which may be an option in a revised rule. HDHP deductibles are generally less than ACA deductibles.
- If person was previously uninsured, affordability condition may be met if the actuarial value (AV) is less than 50 or if plan is a HDHP.

Deficit Neutrality

- The 10-year time frame should be reduced to 5-year waiver window. This is a statutory requirement.
- Eliminate microdata requirement if not used.
- Allow 1115 and 1332 waivers to meet budget neutrality, coverage, affordability requirements.

State Law

- Deem existing state authority, such as insurance commissioner ability to regulate state market, as enactment of a law to provides for State actions under a waiver under this section, including the implementation of the State plan under subsection (a)(1)(B)

Federally Facilitated Exchanges (FFEs)

- The ACA requires a Healthcare.gov-like website to exist and to list all certified plans, but does not explicitly require the site to *enroll* individuals in coverage.
- The administration should create space for web-based entities (WBEs) and direct enrollment pathways and provide state flexibility for non-standard enrollment pathways and periods, actuarial value, or benefit designs, or calculation of financial assistance
- Congress and the administration should work to allow subsidies off-exchange.