A Robert Wood Johnson Foundation program

State Health Reform Assistance Network

Charting the Road to Coverage

Support
provided by

Robert Wood Johnson
Foundation

1332 State Innovation Waivers: Getting off the Ground

Manatt Health Solutions
July 2015

Agenda

- Getting Started with 1332 Waivers
- 1332 Waivers in HealthCare.Gov States
- Discussion of Future Topics
- Discussion

Getting Started with 1332 Waivers

How many want a 1332 waiver?

Why do you need a 1332 waiver?

1332 Activity in the States

State	Status	Description
Arkansas	Bill introduced but not enacted during 2015 session	Would have authorized several state agencies to apply for and to implement 1332 waivers on the state's behalf
California	Senate passed bill, Assembly considering	Requires the Secretary of the California Health and Human Services Agency to apply for a waiver to allow individuals who are not eligible for coverage because of their immigration status to obtain coverage
Hawaii	Legislation Signed by Governor	Narrows "the scope of work of the State Innovation Waiver Task Force to facilitate the development of an Affordable Care Act Waiver in a timely manner"
Rhode Island	Enacted budget	Authorizes Marketplace to pursue a 1332 waiver
New Mexico	Senate passed resolution	Establishes task force within Office of Superintendent of Insurance to study waivers
Minnesota	Legislation Signed by Governor	Governor charged with convening "Task Force on Health Care Financing" to consider, among other topics, using 1332 waivers to improve continuum of coverage and delivery system reform

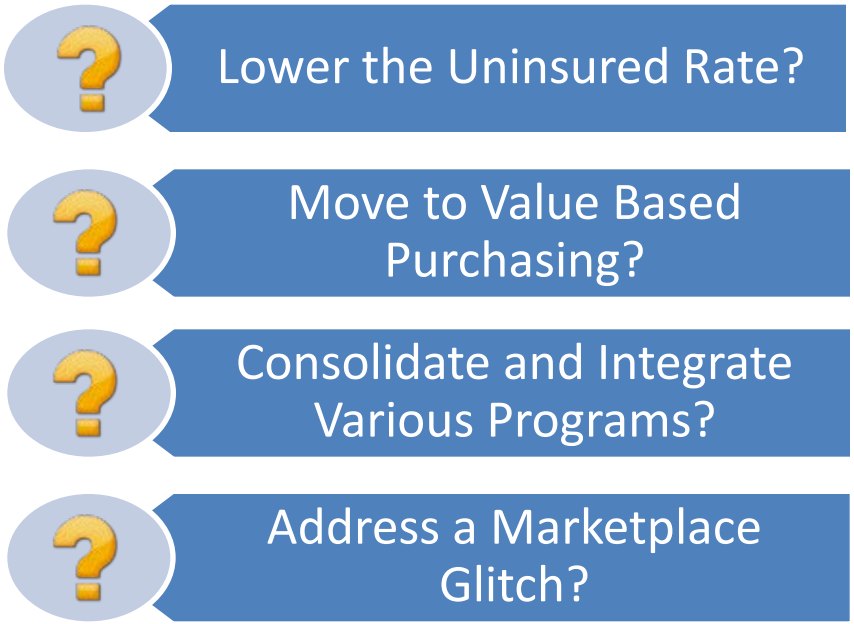
Source: Heather Howard and Galen Benshoof, *Section 1332 Waiver Activity Heating Up in States,* Health Affairs Blog, June 2015. *http://healthaffairs.org/blog/2015/06/24/section-1332-waiver-activity-heating-up-in-states/*

Framework for Moving Forward

Identify State Goals

Important to Align Broad Goals and Targeted Objectives

Does the State Want to….



Identify Barriers and Strategies

Potential Barriers	Strategies for Overcoming Barriers
Eligibility Standards Differ Across Programs	Align Eligibility Requirements
Participating Providers Change Based on Program	Align Standards Across QHPs and Medicaid MCOs
Large Cost Sharing Increases on Small Income Changes	Smooth the Cost Sharing Continuum
Disruption to Existing State Roles/Responsibilities	Convene Interagency Taskforce

Available Tools

1332 waiver to waive certain ACA provisions

1115 waiver to waive provisions of federal Medicaid law

Combine 1332 and 1115 Waivers

State legislation or regulation

Just do it!

Minnesota's Health Care Task Force

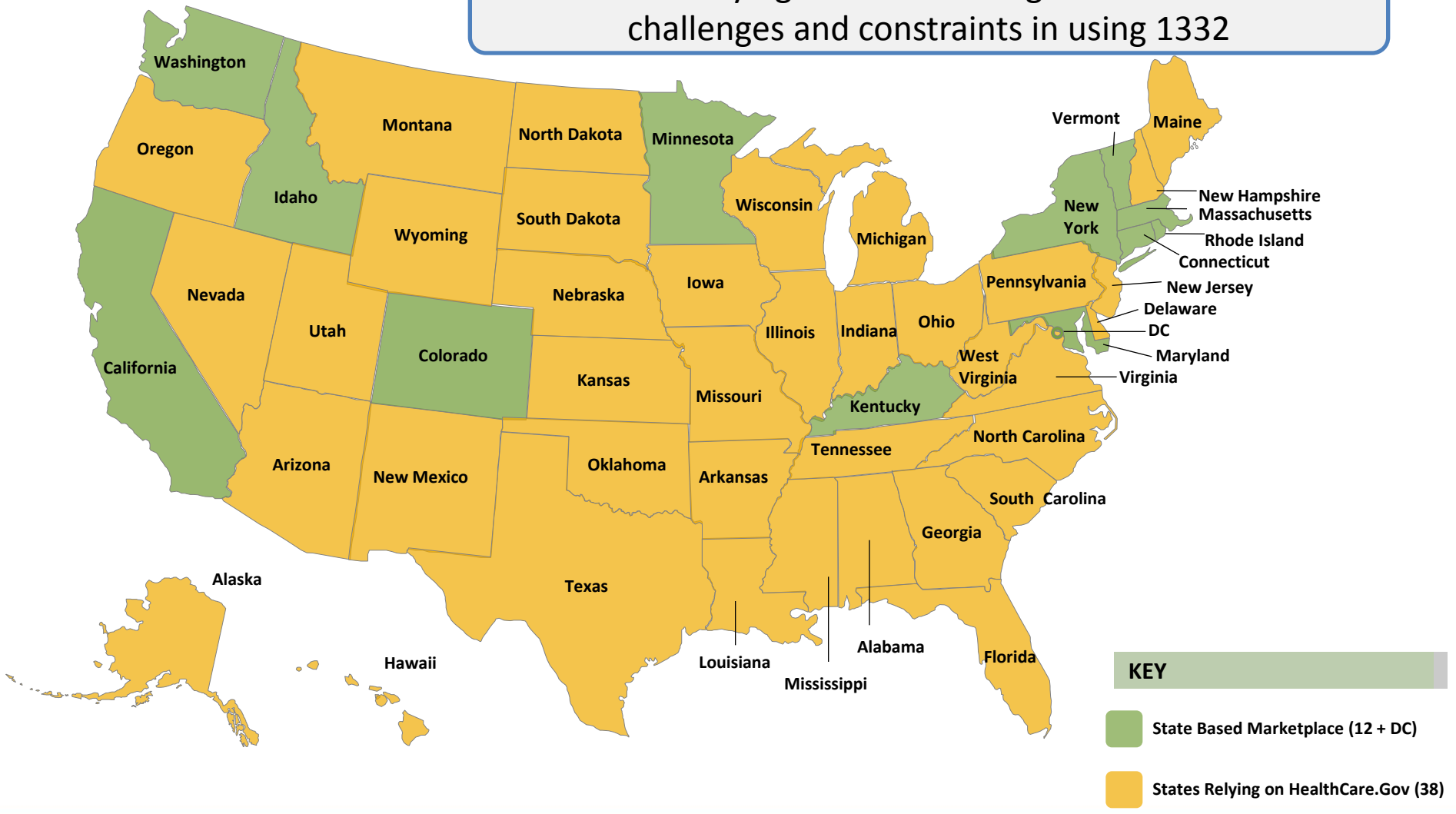
Goal	Barrier	Strategy
Align affordability programs eligibility and enrollment requirements	Sharp differences in out-of-pocket costs as people move from one affordability program to another	Introduce gradual increases in cost-sharing for higher income enrollees to create a smoother transition from public programs to QHPs. 1332? 1115? Existing authority?
Create multi-payer alignment in payment and delivery reform across affordability programs	Providers not incentivized towards the same goals of quality and efficiency across insurance affordability programs	Increase payment for providing care to members based on performance that results in improved health outcomes 1332? 1115? Existing authority?
Align coverage and contracting requirements	As members move between programs, relationships with trusted providers and care delivery may be disrupted	Align network adequacy and quality incentives across payers to facilitate formation of ACOs that serve members across affordability programs.

Source: Minnesota Department of Human Services, *2017 Innovation Waiver Report*, February 2015. *http://www.mn.gov/dhs/images/2017_Innovation_Waiver_Progress_Report.pdf*

1332 Waivers in HealthCare.Gov States

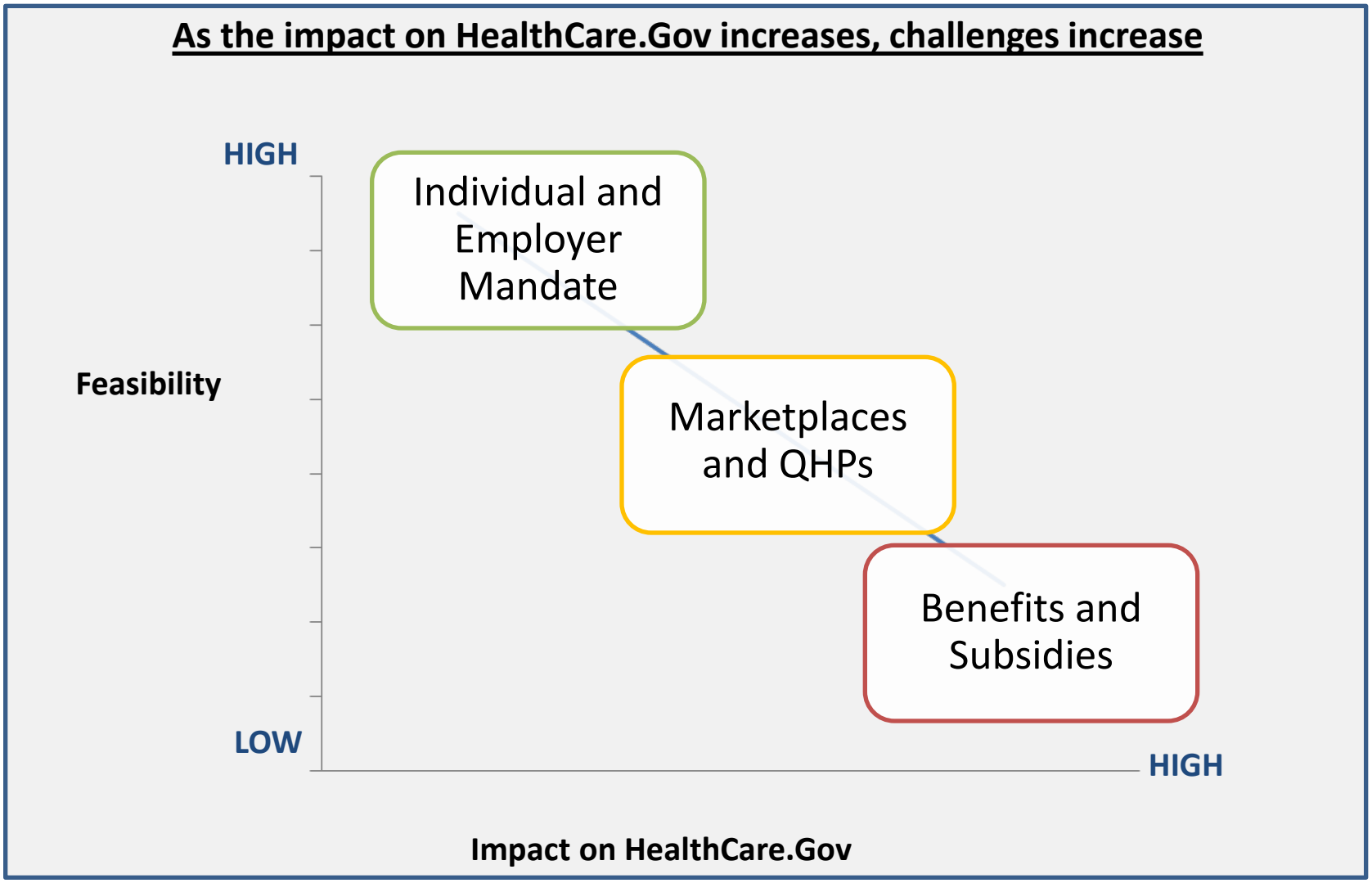
States Relying on HealthCare.Gov

38 states relying on HealthCare.gov face additional challenges and constraints in using 1332



States considering transitioning to HealthCare.Gov should factor in the potential loss of flexibility in developing 1332 waivers for state specific innovation

HealthCare.Gov State Confines



These confines represent the current state of HealthCare.Gov, future improvements may allow for more state flexibility in 2017 and beyond

Replacements for the Individual or Employer Mandate

Easier to do under HealthCare.Gov

- ❑ Individual late enrollment penalty if imposed by QHP issuer
- ❑ Eliminate or change scope of employer mandate

Harder to do under HealthCare.Gov

- ❑ Individual late enrollment penalty if imposed by Marketplace
- ❑ More limited enrollment opportunities for individuals
- ❑ More generous subsidies for individuals
- ❑ Auto-enrollment for individuals

Marketplaces and QHPs

Easier to do under HealthCare.Gov

- ❑ Change the actuarial value of existing metal levels (e.g., wider de minimus variation)

Harder to do under HealthCare.Gov

- ❑ Create new metal level (e.g. copper)
- ❑ Change eligibility criteria for catastrophic enrollment

1332 waivers can be used to replace the Marketplace with an alternative model, such as using direct enrollment to obtain subsidies without a central Marketplace

Benefits, Subsidies and Medicaid-Marketplace Convergence

Easier to do under HealthCare.Gov

- ❑ Add a new benefit category
- ❑ Permit non-insurers (Medicaid MCOs, ACOs) to be QHP issuers

Harder to do under HealthCare.Gov

- ❑ Change value of subsidies or eligibility for subsidies
- ❑ Permit Medicaid beneficiaries to select plans

Discussion of Future Topics

Future Topics?

1. Smoothing Cost Continuum
2. Individual Mandate
3. Employer Mandate
4. Coordination between 1332 and 1115 waivers
5. Alternatives to traditional Marketplace structure
6. Using 1332 for Marketplace sustainability
7. Redefining essential health benefits

Discussion

Thank you!

Joel Ario Jario@Manatt.com

Deborah Bachrach DBachrach@Manatt.com

Patti Boozang PBoozang@Manatt.com

Sharon Woda SWoda@Manatt.com

Michael Kolber MKolber@Manatt.com

Spencer Manasse SManasse@Manatt.com

A Robert Wood Johnson Foundation program

State Health Reform Assistance Network

Charting the Road to Coverage

Support provided by

Robert Wood Johnson Foundation

1332 State Innovation Waivers: Lessons Learned from the Basic Health Program

Manatt Health Solutions
November 2015

Agenda

- Overview
- Federal Funding Methodology
- Key Policy & Operational Issues
- Discussion

Overview

Today's Focus

Discuss lessons learned from implementing the Basic Health Program (BHP) to inform 1332 planning across two key areas:

1. **Federal Funding Methodology**
2. **Key Policy and Operational Issues**

Federal Funding Methodology

Introduction to BHP & 1332 Federal Funding

How will CCIIO calculate the amount of federal funds available to the states under a 1332 waiver?

Basic Health Program

"The amount determined . . . ***is equal to 95 percent of the premium tax credits under section 36B of title 26, and the cost-sharing reductions under section 1402****, that would have been provided for the fiscal year to eligible individuals enrolled in standard health plans in the State if such eligible individuals were allowed to enroll in qualified health plans through an Exchange established under this subtitle."*

PPACA § 1331(d)(3)(A)(i)

1332 Waiver for Innovation

"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."*

PPACA § 1332(a)(3)

Approach to Calculating BHP Funding

"The BHP funding methodology is designed to calculate the PTC and CSRs as consistently as possible and in general alignment with the methodology used by Exchanges."

42 CFR 600(3)(A)

Determine 95% PTC/CSR funding on a per enrollee basis

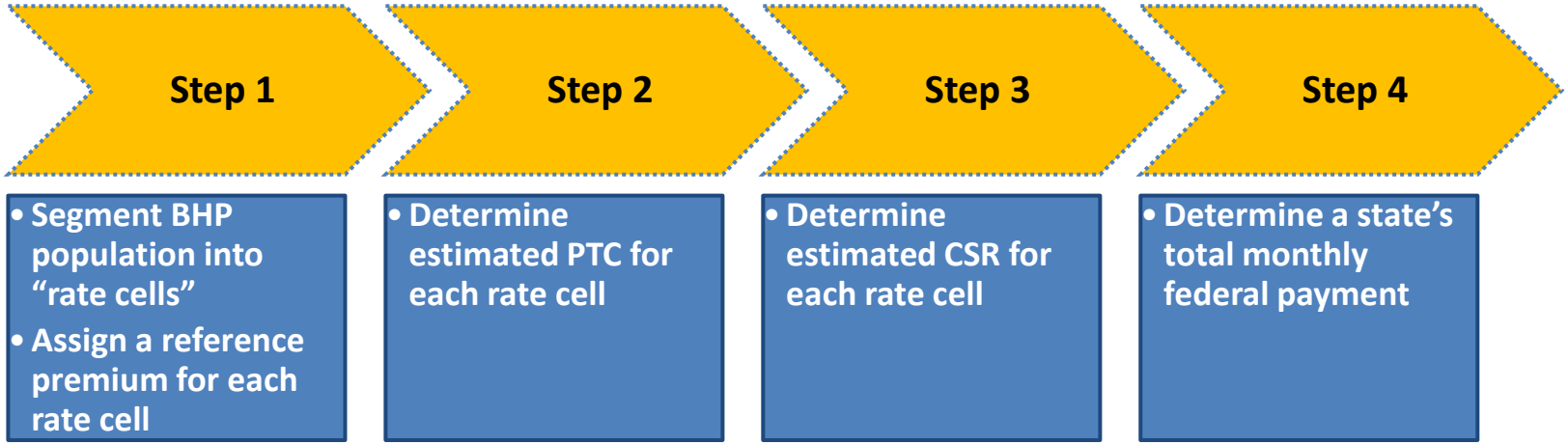
Account for each enrollee's:

- Age
- Income
- Coverage type (self-only or family)
- Geography
- Health status
- Income reconciliation

Consider Exchange experience with a special focus on enrollees < 200% FPL.

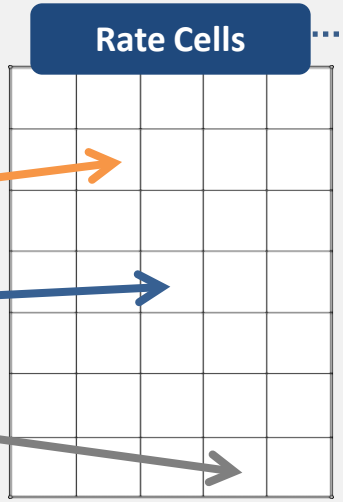
PPACA § 1331(d)(3)(A)(ii)

Overview of BHP Funding Methodology



BHP Federal Funding Methodology

Step 1 — **Segment BHP population into "rate cells" and determine a reference premium for each cell**



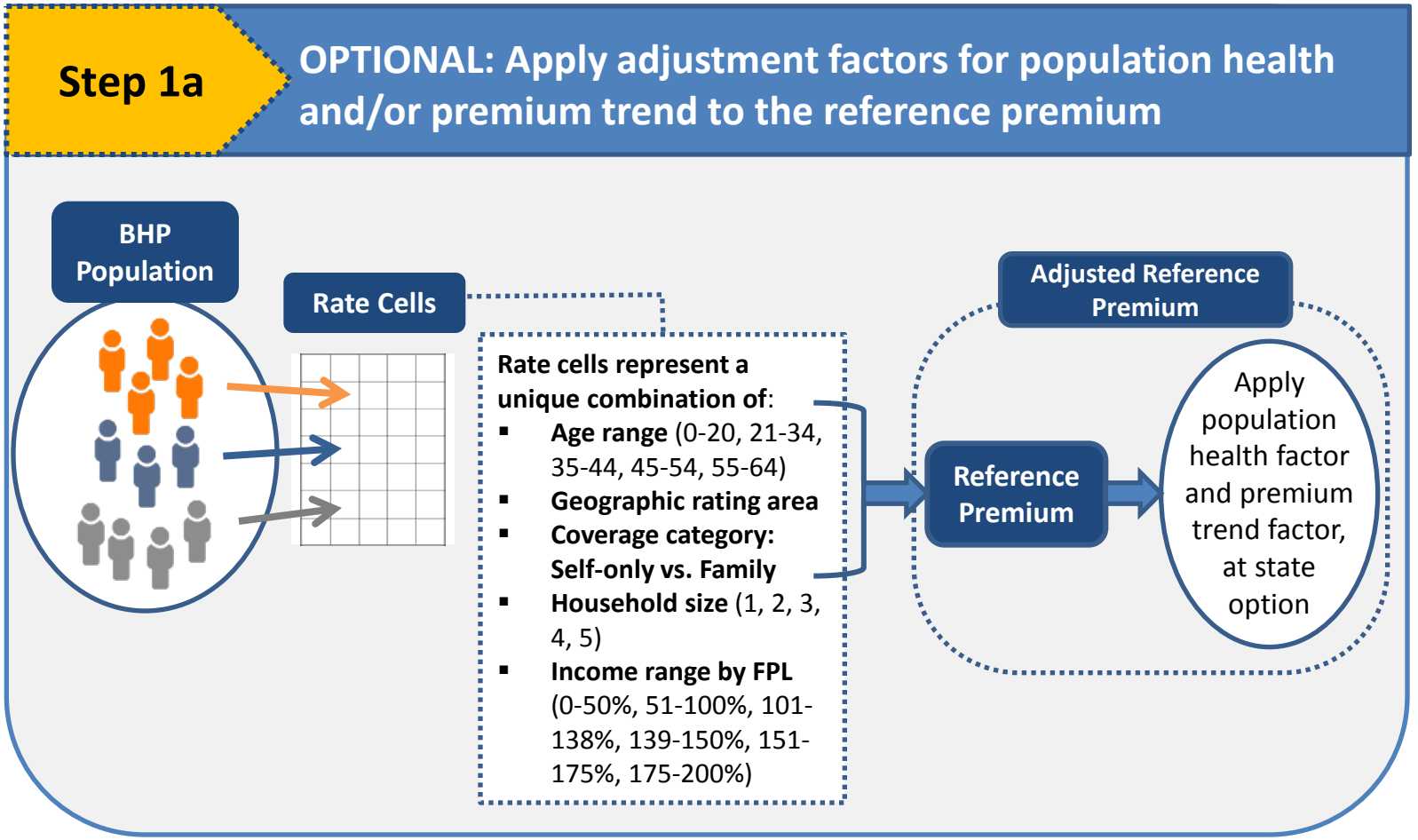
Rate cells represent a unique combination of:

- **Age range** (0-20, 21-34, 35-44, 45-54, 55-64)*
- **Geographic rating area**
- **Coverage category: Self-only vs. Family**
- **Household size** (1, 2, 3, 4, 5)
- **Income range by FPL** (0-50%, 51-100%, 101-138%, 139-150%, 151-175%, 175-200%)

Reference premium based on the SLCSP for individuals with these factors

**For states that do not use age rating, the BHP payment rate will not vary by age in those states.*

BHP Federal Funding Methodology, cont.



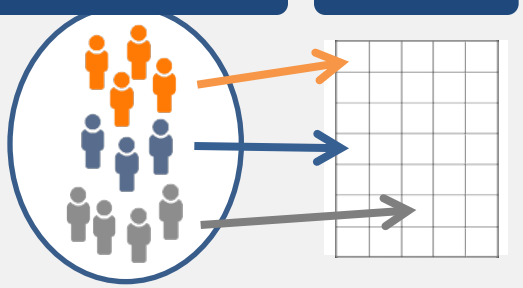
Note: *Population Health Factor (PHF): PHF= 1 through 2018 (until subsequent methodology alters), unless state proposes state-specific adjustment.*
Premium Trend Factor (PTF): State option to use the prior year's premiums as the basis for the federal payments, in which case, the reference premium is adjusted for the PTF.

BHP Federal Funding Methodology, cont.

Step 2 Determine estimated PTC for each rate cell

BHP Population

Rate Cells



Rate cells represent a unique combination of:

- **Age range** (0-20, 21-34, 35-44, 45-54, 55-64)
- **Geographic rating area**
- **Coverage category: Self-only vs. Family**
- **Household size** (1, 2, 3, 4, 5)
- **Income range by FPL** (0-50%, 51-100%, 101-138%, 139-150%, 151-175%, 175-200%)

- **Determine estimated PTC payment for individuals in each cell**
- **Adjust for Income Reconciliation Factor**

= PTC

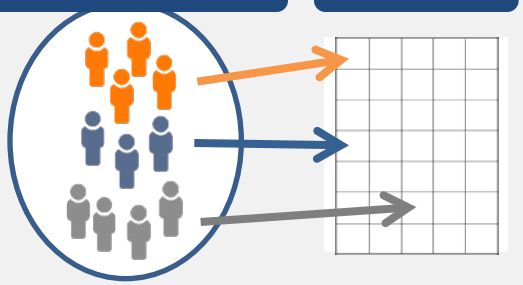
Note: The PTC portion of each rate represents the average that all persons in the rate cell would receive.

BHP Federal Funding Methodology, cont.

Step 3 Determine estimated CSR for each rate cell

BHP Population

Rate Cells



Rate cells represent a unique combination of:

- **Age range** (0-20, 21-34, 35-44, 45-54, 55-64)
- **Geographic rating area**
- **Coverage category: Self-only vs. Family**
- **Household size** (1, 2, 3, 4, 5)
- **Income range by FPL** (0-50%, 51-100%, 101-138%, 139-150%, 151-175%, 175-200%)

- **Determine estimated CSR payment for individuals in each cell**
- **Adjust for:**
  - **Tobacco rating**
  - **Administrative costs**
  - **Induced utilization**

= CSR

Note: The PTC portion of each rate represents the average that all persons in the rate cell would receive.

BHP Federal Funding Methodology, cont.

Step 4 Determine a state's total monthly federal payment

Payment for Rate Cell X = (95% PTC + 95% CSR) x Projected # of Enrollees

+

Payment for Rate Cell Y = (95% PTC + 95% CSR) x Projected # of Enrollees

+

Payment for Rate Cell Z = (95% PTC + 95% CSR) x Projected # of Enrollees

---

Total Monthly Payment to State

Key Policy & Operational Issues

Population Health Factor

BHP Approach

- CMS assumes no health status differences between BHP and QHP enrollees (i.e., Population Health Factor =1)
- States have the option to propose and implement a retrospective risk adjustment if they believe their BHP population to be less healthy than their Marketplace population.
- MN opted to develop and implement risk adjustment protocol as part of payment methodology; NY opted not to pursue risk adjustment.

Key Insights

- Payment methodology flexibility is helpful to states operating in an uncertain environment but also complicates the payment process.
- In the absence of Marketplace data, actuarial analysis was crucial to states in predicting their expected BHP populations.
- Analysis of potential variables and models for 1332 waivers will be able to build off of 2014-2016 Marketplace data.

Prospective Payments to States

BHP Approach

- CMS determines BHP payments to states on a prospective, state-specific, quarterly basis, multiplying payment rates by projected BHP enrollment.
- Payments are adjusted retrospectively based on actual enrollment but are not corrected for any other factors (except in states pursuing optional risk adjustment).
- Additional payments are deposited into the BHP Trust Fund, while reductions are applied to the state's prospective payment in the upcoming quarter.

Key Insights

- Prospective methodology provides states with predictability.
- Quarterly payments allow for incremental adjustment rather than one annual adjustment of the entire amount.
- 1332 does not require states to set up a Trust Fund.

Risk Pool

BHP Approach

- The BHP population is excluded from the individual Marketplace.
- States conducted analyses to determine the impact this would have on the relative health of their Marketplace population.

Key Insights

- If a state uses its 1332 waiver to implement an alternative coverage vehicle for a subset of its Marketplace population, there will be risk pool implications.

Funding for Program Administration

BHP Approach

- 1331(d)(2) requires that BHP federal funding "only be used to reduce the premiums and cost-sharing of, or to provide additional benefits for" BHP enrollees.
- States must identify other (non-federal) funding sources to cover BHP program administration costs.

Key Insights

- Nothing in the 1332 requirements appears to impose the same prohibition on states.

Non-Filer Households

BHP Approach

- CMS permits BHP enrollees to be non-filers.
- For non-filer households, use Medicaid rules to determining household size and income.
- For filer households, use Marketplace rules to determining household size and income.

Key Insights

- Flexibility critical but complicated to administer.
- NY used Medicaid non-filer rules with retrospective sampling and CMS is evaluating potential payment adjustments.

Medicaid/Marketplace Alignment

BHP Approach

- To the extent possible, CMS aligned BHP rules with Medicaid and/or Marketplace rules.
- Where Marketplace and Medicaid rules conflicted, CMS sought to align BHP with one program or the other, or where possible, provide States with flexibility to choose how to align.

Key Insights

- 1332 waivers provide an opportunity to align Marketplace rules with Medicaid rules.

State Flexibility

Most E&E features, including:

- Authorized Representatives
- CACs
- Eligibility Verification
- Eligibility Effective Date
- Enrollment Period
- Eligibility Appeals
- Eligibility Redeterminations

Some enrollee premiums & cost sharing features, including:

- Premium Grace Periods
- Reenrollment Standards

Marketplace:

- First day of the following month if QHP selected between 1st-15th or first day of second following month if QHP selected between 16th and last day. 45 CFR 155.420(b)(1)

Medicaid:

- First day of the month if individual was eligible any time during that month. 42 CFR 435.915(b)

Launch & Coverage Transitions

BHP Approach

- Permitted to phase-in enrollment in 2015 only.
- MN employed block renewal process for January 1, 2015.
- NY opted for phased-in approach:
  - Transition Period (April 1-Dec 31, 2015) for lawfully present non-citizens with household incomes 0-133% FPL
  - Full Launch (January 1, 2016)

Key Insights

- High potential for disruption (among consumers, IT systems, etc.)
- Phased-in approach allows time for coverage conversion, near-term use of federal funding, and additional time for system build, staff training, and enrollee verification.
- Assistors and consistent messaging critical to all coverage transitions.

Discussion/Questions?

Next Steps

Next Steps

Webinar Topic	Date
1332 State Innovation Waivers: What's Next for States	4/20/15
1332 State Innovation Waivers: What Can be Waived?	5/29/15
1332 State Innovation Waivers: Getting off the Ground	7/13/15
1332 State Innovation Waivers: Coordinating 1332 and 1115 Waivers	8/24/15
1332 State Innovation Waivers: Issues Related to Coordinated Waivers	10/6/15
1332 State Innovation Waivers: Learning from the Basic Health Program	TODAY
Topic TBD	TBD-- December

Thank you!

Deborah Bachrach DBachrach@Manatt.com

Patti Boozang PBoozang@Manatt.com

Melinda Dutton, MDutton@Manatt.com

Arielle Traub, ATraub@Manatt.com

Heather Howard, Heatherh@princeton.edu

Daniel Meuse, Dmeuse@princeton.edu

A Robert Wood Johnson Foundation program

State Health Reform Assistance Network

Charting the Road to Coverage

Support
provided by

Robert Wood Johnson
Foundation

State Health Reform Assistance Network
Charting the Road to Coverage

A Robert Wood Johnson Foundation program

1332 State Innovation Waivers: What's Next for States

Manatt Health Solutions
April 2015

Agenda

- 1332 Waivers: Basics
- Obtaining a Waiver
- Waiver Possibilities
- Future Topics for Workgroup
- Discussion

1332 Waivers: Basics

What can be waived?

States may request waivers from HHS and the Treasury Department of certain requirements of the Affordable Care Act (ACA), effective 01/01/2017

1 ***Individual Mandate***

States can modify or eliminate the tax penalties that the ACA imposes on individuals who fail to maintain health coverage.

2 ***Employer Mandate***

States can modify or eliminate the penalties that the ACA imposes on large employers who fail to offer affordable coverage to their full-time employees.

3 ***Benefits and Subsidies***

States may modify the rules governing covered benefits and subsidies. States that reallocate premium tax credits and cost-sharing reductions may receive the aggregate value of those subsidies for alternative approaches.

4 ***Exchanges and QHPs***

States can modify or eliminate QHP certification and the Exchanges as the vehicle for determining eligibility for subsidies and enrolling consumers in coverage.

ACA § 1332(a)(2)

Section 1332 waivers can be coordinated with 1115 waivers, which may create opportunities for states to address differences among these federal programs that may impede efforts to pursue multi-payer delivery system reform.

What can't be waived?

States may not waive fair play rules

Guaranteed Issue

States may not waive non-discrimination provisions prohibiting carriers from denying coverage or increasing premiums based on medical history. States are precluded from waiving rules that guarantee equal access at fair prices for all enrollees.

What are the Statutory Guardrails?

A state waiver application must satisfy four criteria to be granted

1 ***Scope of Coverage***

The waiver must provide coverage to at least as many people as the ACA would provide without the waiver.

2 ***Comprehensive Coverage***

The waiver must provide coverage that is at least as "comprehensive" as coverage offered through the Exchange.

3 ***Affordability***

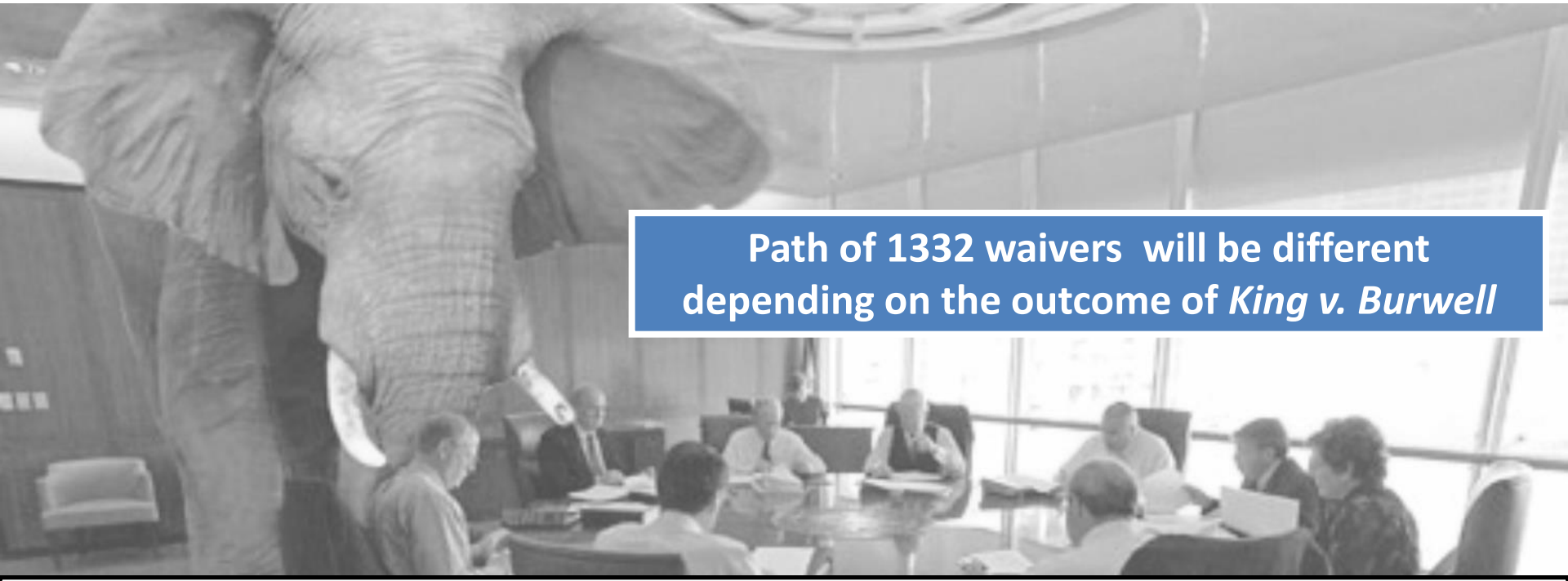
The waiver must provide "coverage and cost sharing protections against excessive out-of-pocket" spending that is at least as "affordable" as Exchange coverage.

4 ***Federal Deficit***

The waiver must not increase the federal deficit.

ACA § 1332(b)(1)

Where does *King vs. Burwell* fit?



Path of 1332 waivers will be different depending on the outcome of *King v. Burwell*

Ruling in Favor of Federal Government

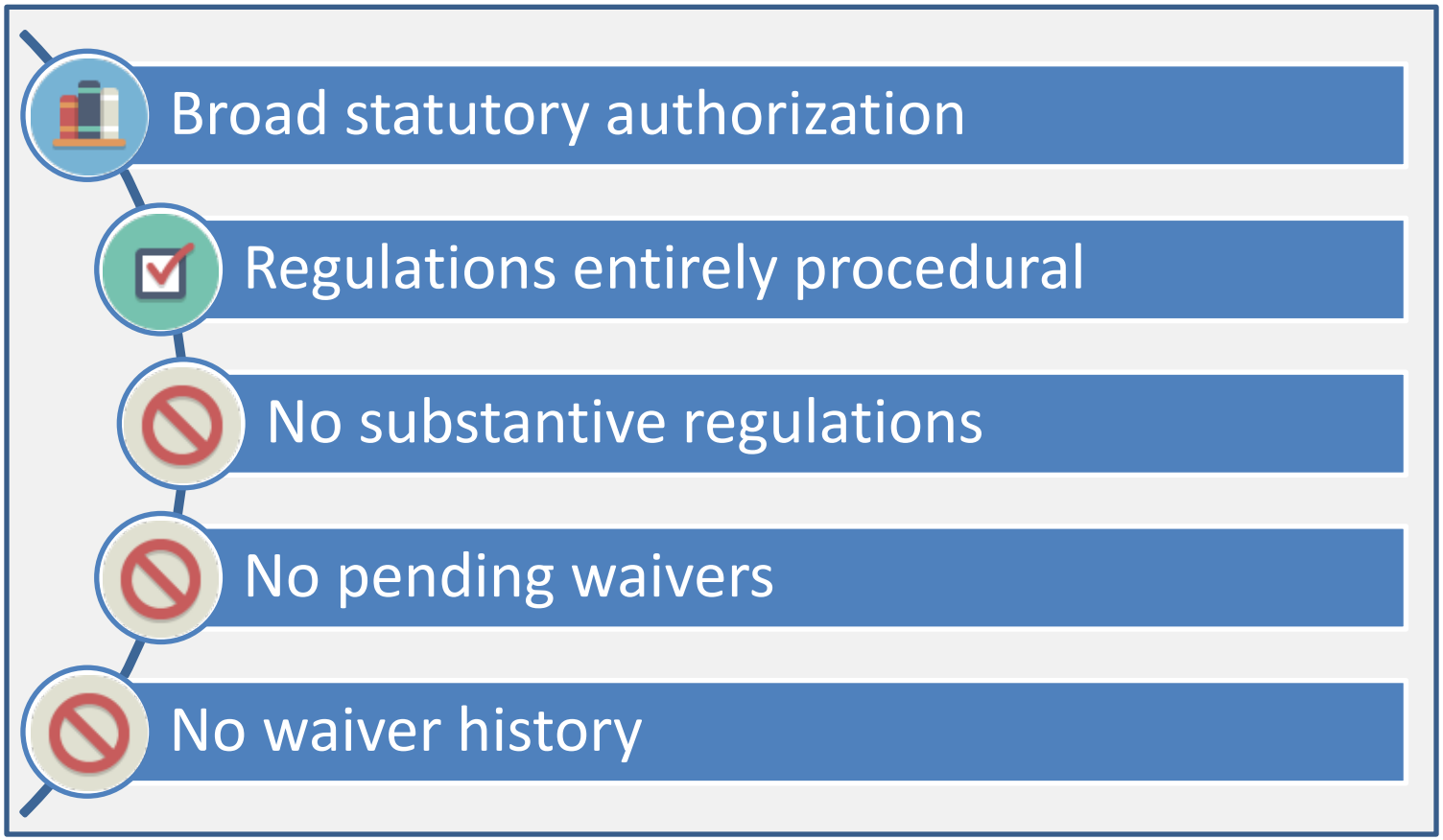
1332 will serve as a pathway for states to introduce innovative programs specific to state priorities.

Ruling in Favor of Plaintiff

1332 waiver effective date may be advanced to provide flexibility to continue flow of subsidies in current FFM states.

1332 Provides New Opportunities for States

Working off an (almost) blank slate



Obtaining a Waiver

Steps in Waiver Process

State

- Consider state goals and determine if 1332 waiver is desirable
- Have sufficient state authority to implement the waiver
- Draft waiver application
- Hold pre-application hearing
- Include in waiver application:
  - Actuarial/economic analyses
  - Implementation timeline
  - Ten-year budget plan

HHS and Treasury

- Deem the waiver application complete
- Conduct federal notice and comment period
- Review the application within 180 days of determining it is complete
- Approve or reject the waiver application

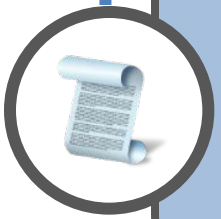
Implementation

- Waivers implemented in 2017 or later
- Quarterly and annual reports submitted to Treasury and HHS
- Waiver renewals begin no later than 2022 because the term of waiver may not exceed five years

There is no deadline for submitting a waiver application and states may submit prior to 2017

State Authority

Section 1332 requires that a state have authority under state law to submit *and* implement a waiver request

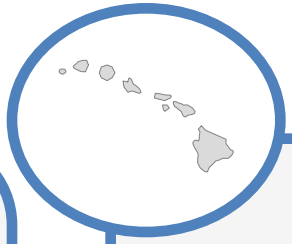


States may use preexisting law that grants state authority

ACA § 1332(a)(1)(C), (b)(2)(A)

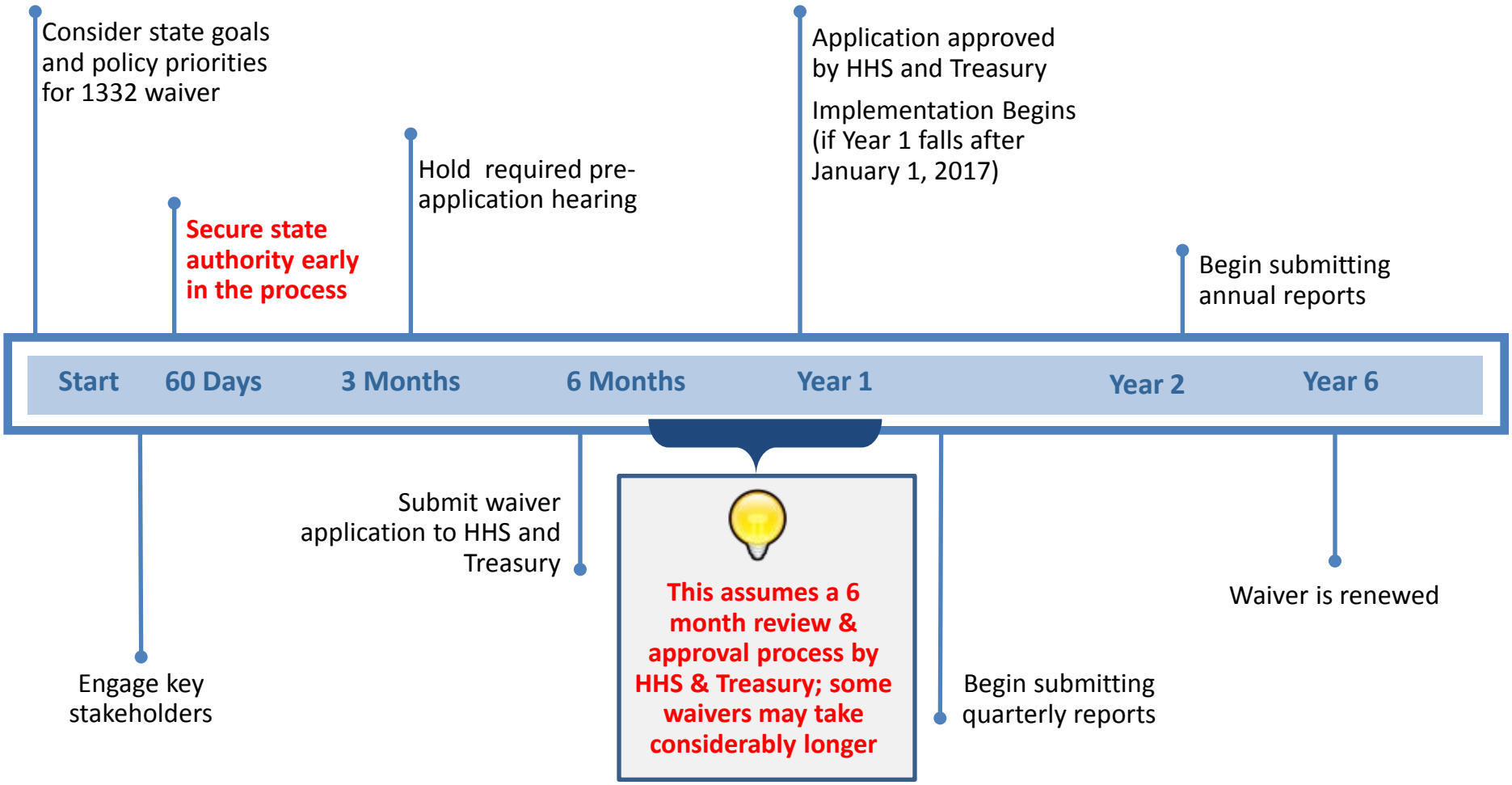
Stakeholder Engagement

The most compelling ideas for innovation may emerge after state officials and key stakeholders come together and forge consensus around the needs of their public programs and commercial insurance markets.



Hawaii's 1332 taskforce may be a model for other states wanting to ensure all options are considered in a public and transparent way through their engagement of stakeholders in a review of available options.

Sample 1332 Implementation Timeline



Waiver Possibilities

Possibilities for 1332 Waivers

A wide open opportunity for states to innovate, subject to the statutory guardrails

1 ***Far Reaching Policy Initiatives***

Opportunity to alter the ACA coverage paradigm by: changing subsidy structure, waiving individual or employer mandate, or replacing the Exchange entirely.

2 ***Targeted Fixes***

Opportunity to address specific ACA issues including: aligning income rules for Medicaid and APTC, addressing the "family glitch", or delaying extension of rate regulation to 51 – 100 small employer market.

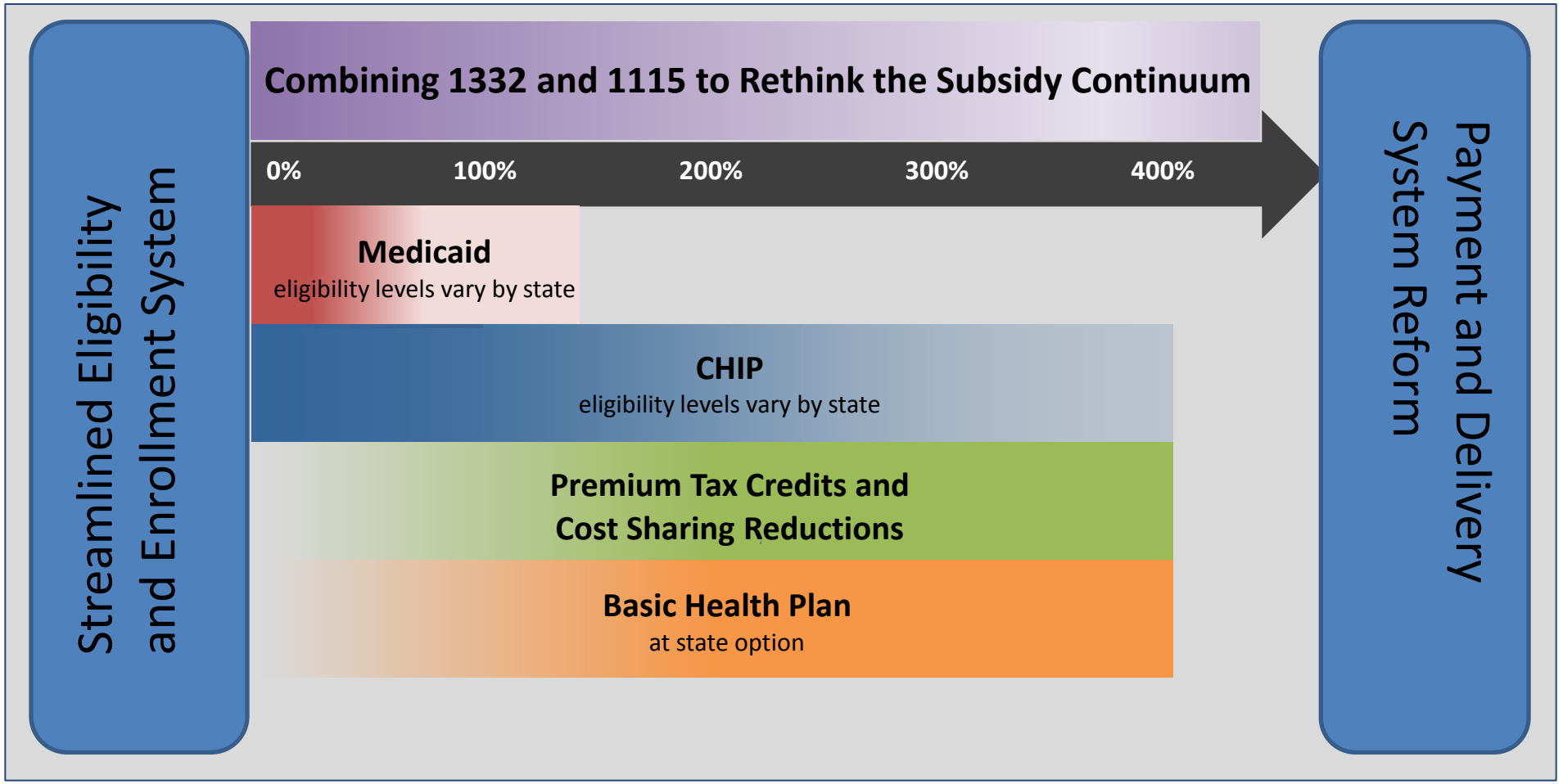
3 ***State Specific Innovation***

Opportunity to address each state's unique healthcare landscape and market. One example would be for a state to weigh subsidies based off different rating area average premium costs.

4 ***Sustainability***

States with limited individual public markets may redefine who is eligible for the Exchange to increase economies of scale.

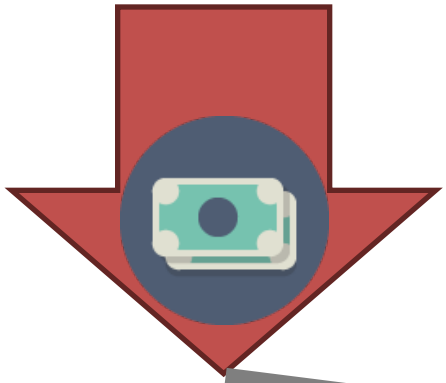
Waiver Example: Smoothing the Cost Continuum



Considerations:

1. Goals
2. What needs to be waived
3. How to meet the guardrails

Waiver Example: Increasing Sustainability



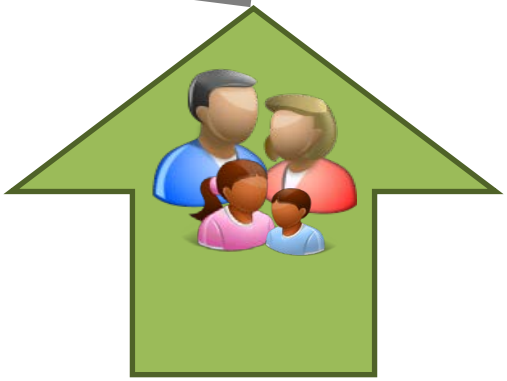
Go Lean on Operations

- Replace public exchange with direct to issuer model
- Public partnership with web-brokers
- Eliminate SHOP

Exchange Sustainability

Expand the Population

- Medicaid Premium Assistance for QHPs
- Allow state employees to purchase QHPs

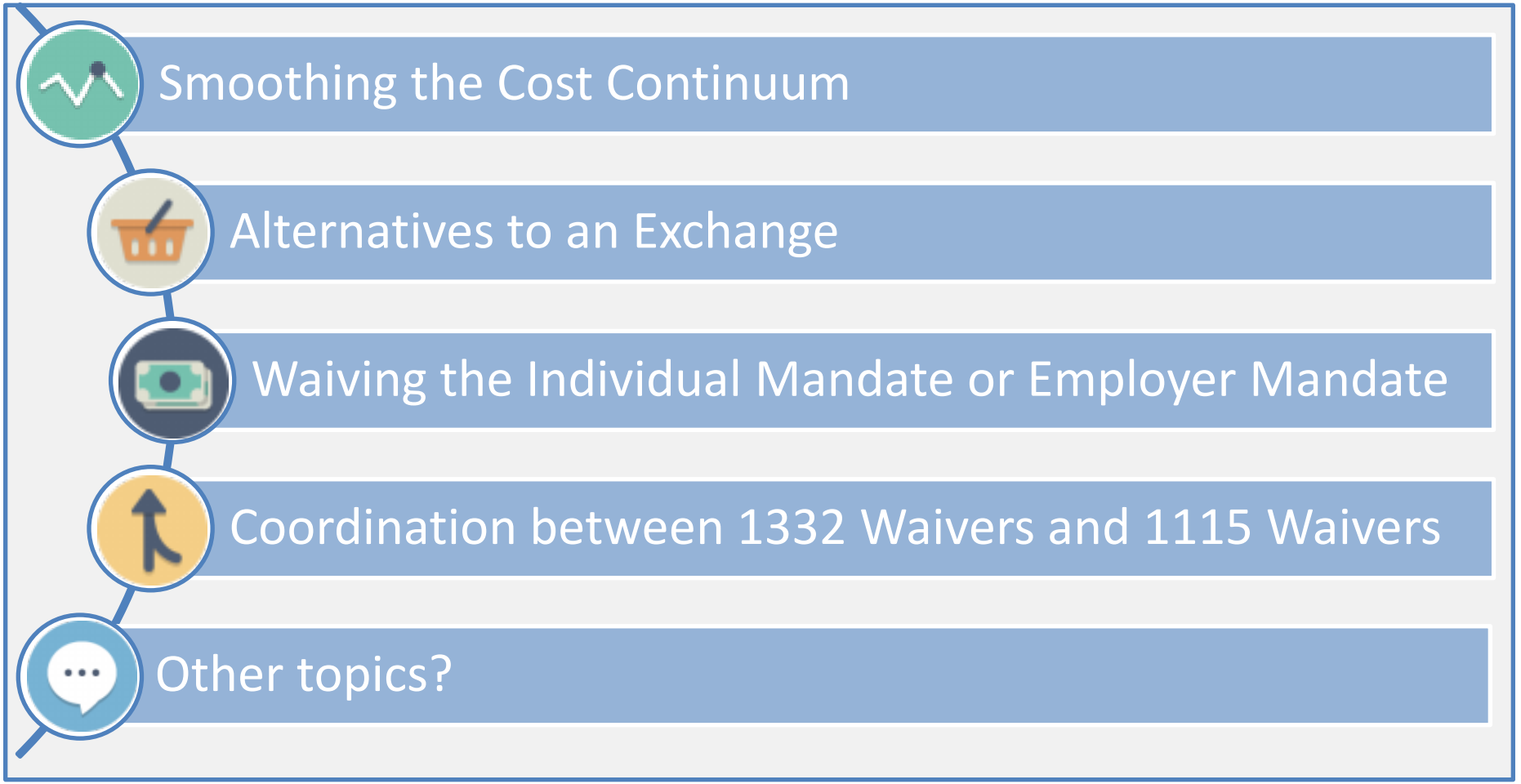


Considerations:

1. Goals
2. What needs to be waived
3. How to meet the guardrails

Future Topics for Workgroup

Future Topics for Workgroup Discussion



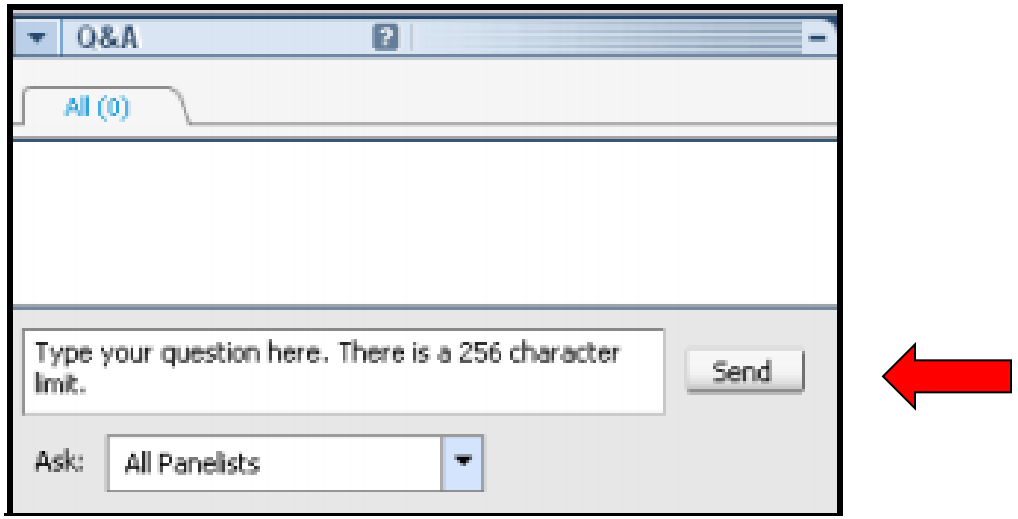
Please contact Galen Benshoof at benshoof@princeton.edu for additional suggestions

Discussion

Submitting Questions

To ask a question:

1. Ask question verbally
2. Submit question in writing



Thank you!

Joel Ario Jario@Manatt.com

Deborah Bachrach DBachrach@Manatt.com

Patti Boozang PBoozang@Manatt.com

Michael Kolber MKolber@Manatt.com

Sharon Woda SWoda@Manatt.com

Spencer Manasse SManasse@Manatt.com