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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.

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.

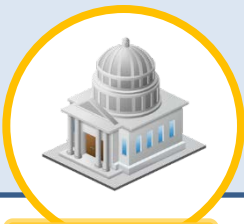
1332 Provides New Opportunities for States

Working off an (almost) blank slate

-  Broad statutory authorization
-  Regulations entirely procedural
-  No substantive regulations
-  No pending waivers
-  No waiver history

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

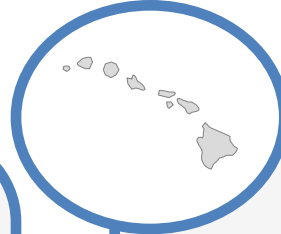


States may use preexisting law that grants state authority

Stakeholder Engagement

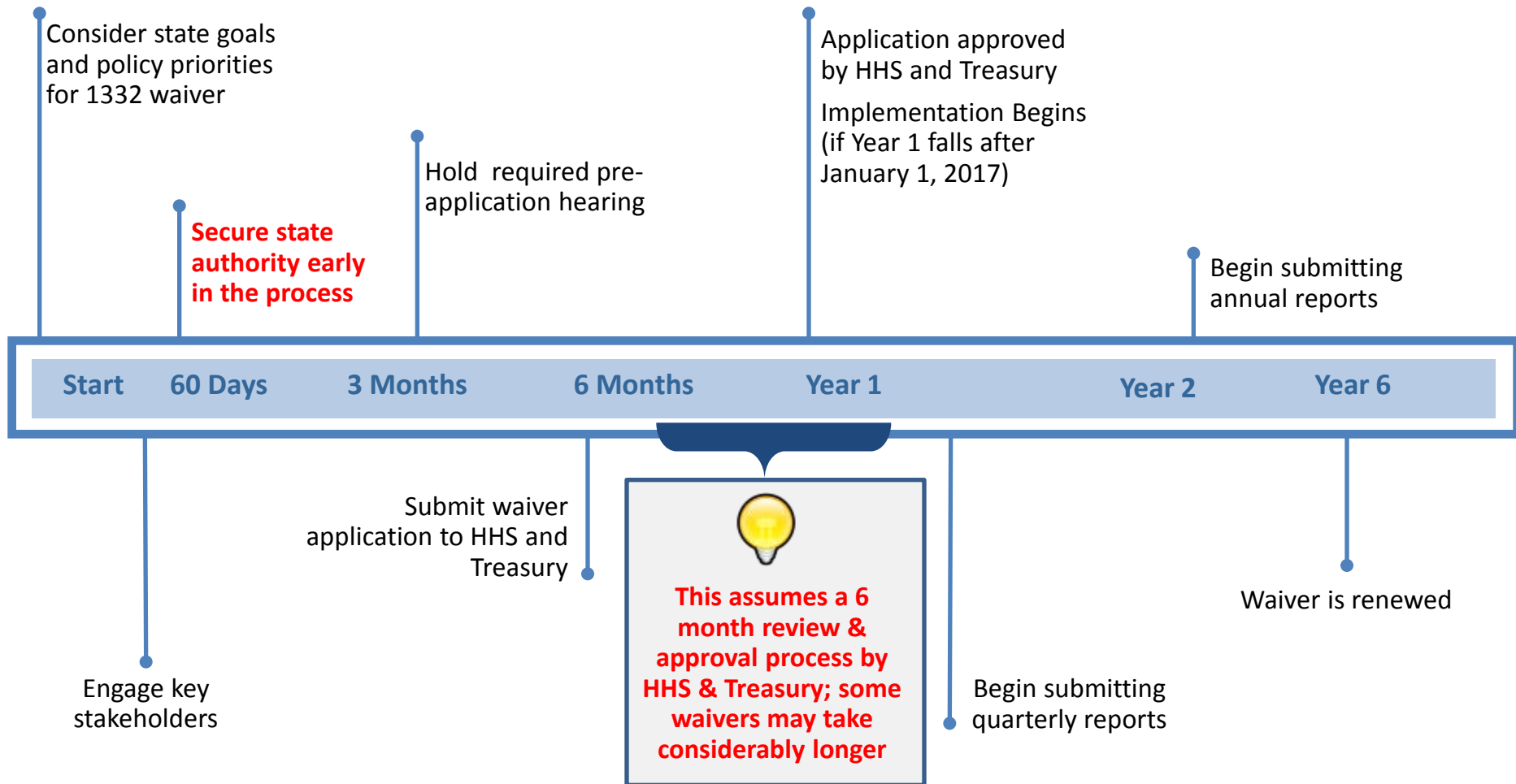


The most compelling ideas for innovation may emerge after state officials and key stakeholders come together and forge consensus around the needs of their public programs and commercial insurance markets.



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.

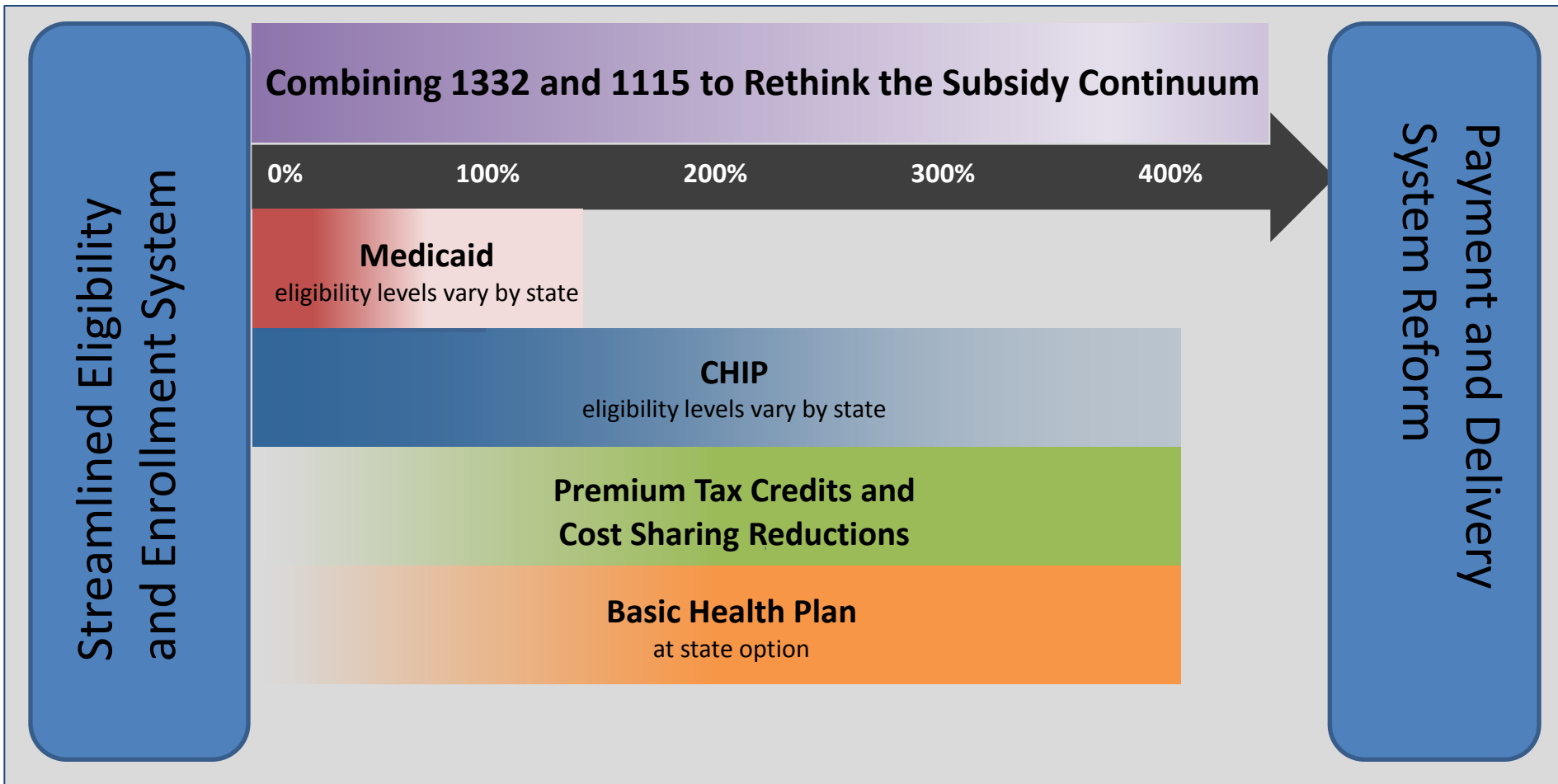
3 *State Specific Innovation*

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

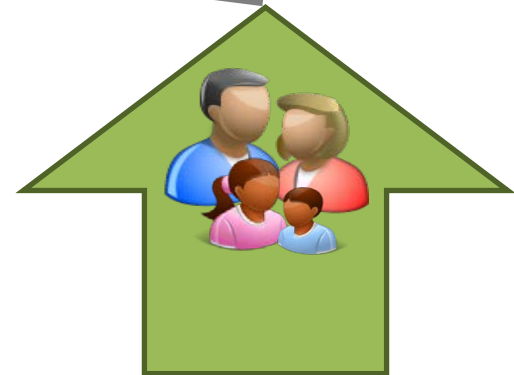
Go Lean on Operations

- 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



Smoothing the Cost Continuum



Alternatives to an Exchange



Waiving the Individual Mandate or Employer Mandate



Coordination between 1332 Waivers and 1115 Waivers



Other topics?

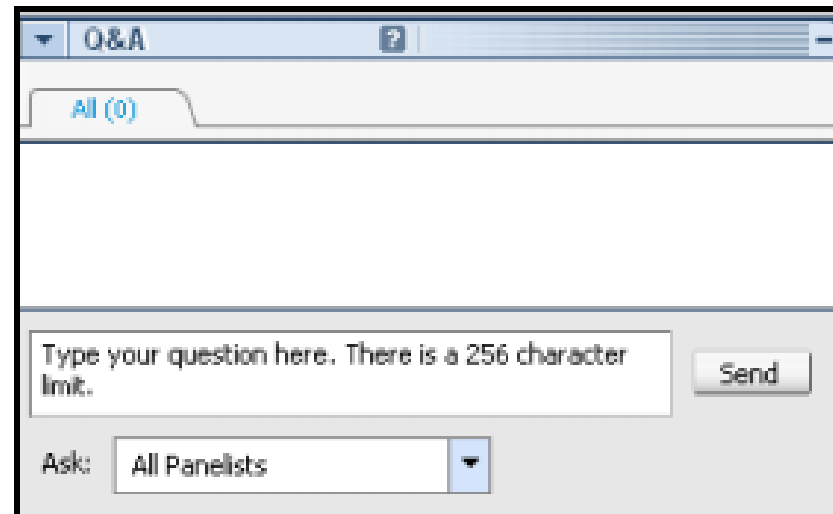
Please contact Galen Benshoof at benshoof@princeton.edu for additional suggestions

Discussion

Submitting Questions

To ask a question:

1. Ask question verbally
2. Submit question in writing

A screenshot of a web-based Q&A submission form. The window title is "Q&A". Below the title bar, there is a tab labeled "All (0)". The main content area is empty. At the bottom, there is a text input field with the placeholder text "Type your question here. There is a 256 character limit." and a "Send" button to its right. Below the text field is a dropdown menu labeled "Ask:" with "All Panelists" selected. A red arrow points to the "Send" button.

Thank you!

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