KANSAS HEALTH INSTITUTE
Informing Policy. Improving Health.

Section 1332 Waiver for State Innovation

November 12, 2019
Special Committee on Medicaid Expansion

WHO WE ARE

- Nonprofit, nonpartisan educational organization based in Topeka.
- Established in 1995 with a multiyear grant by the Kansas Health Foundation and located directly across from Kansas Statehouse in downtown Topeka.
- Committed to convening meaningful conversations around tough topics related to health.

WHAT IS A SECTION 1332 WAIVER?

Section 1332 of the Patient Protection and Affordable Care Act (ACA), which is titled *Waiver for State Innovation*, allows states to apply to the Secretary of the U.S. Department of Health and Human Services (HHS) for a waiver to develop and implement state-specific approaches and strategies to health reform and coverage to provide citizens with access to affordable health care.

WHAT IS A SECTION 1332 WAIVER?

- States can (1) use existing statutory authority to enforce the ACA and issue a regulation or executive order or (2) enact a new state law to apply for and implement a waiver.
- However, states can simultaneously pursue legislative authority to pursue a waiver while developing and drafting a waiver application and actuarial analysis.

WHAT IS A SECTION 1332 WAIVER?

- Section 1332 waivers could begin on or after January 1, 2017, and, once approved, may remain in effect for five years and be extended.
- States that receive waivers may become eligible for federal pass-through funding to help implement waiver plans.

SECTION 1332 WAIVER IS <u>NOT</u> A MEDICAID WAIVER?

- Section 1332 waivers are <u>not</u> related to Medicaid, and are separate and distinct from Section 1115 waivers
- Section 1332 waivers are designed to allow states to implement programs that will impact their private health insurance markets, most often the individual market
- The rules and requirements for submission and approval of a Section 1332 waiver are not dependent upon the status of any Section 1115 waiver

SECTION 1332 WAIVER REQUIREMENTS

A state's waiver application must demonstrate that its proposed waiver plan will:

- Provide comprehensive coverage that is comparable to the coverage offered through the ACA;
- Ensure affordability by providing coverage and cost-sharing protection against excessive out-of-pocket spending;
- Provide coverage to at least a comparable number of residents as the ACA; and
- Ensure the waiver plan will not increase the federal deficit.

WHAT CAN BE WAIVED?

Provisions of the ACA and the Internal Revenue Code related to:

- Establishing Qualified Health Plans (QHPs);
- Consumer choices and insurance competition through health insurance;
- Premium tax credits and cost-sharing reductions for QHPs offered within the marketplace; and
- Employer shared responsibility.

EXAMPLES OF WHAT CAN BE WAIVED

- Establishment of a marketplace;
- Functions of a marketplace, including QHP Certification;
- Enrollment periods, both open enrollment and special enrollment periods;
- Essential Health Benefits (EHB);
- Actuarial Value (AV) metal levels; and
- Single Risk Pool.

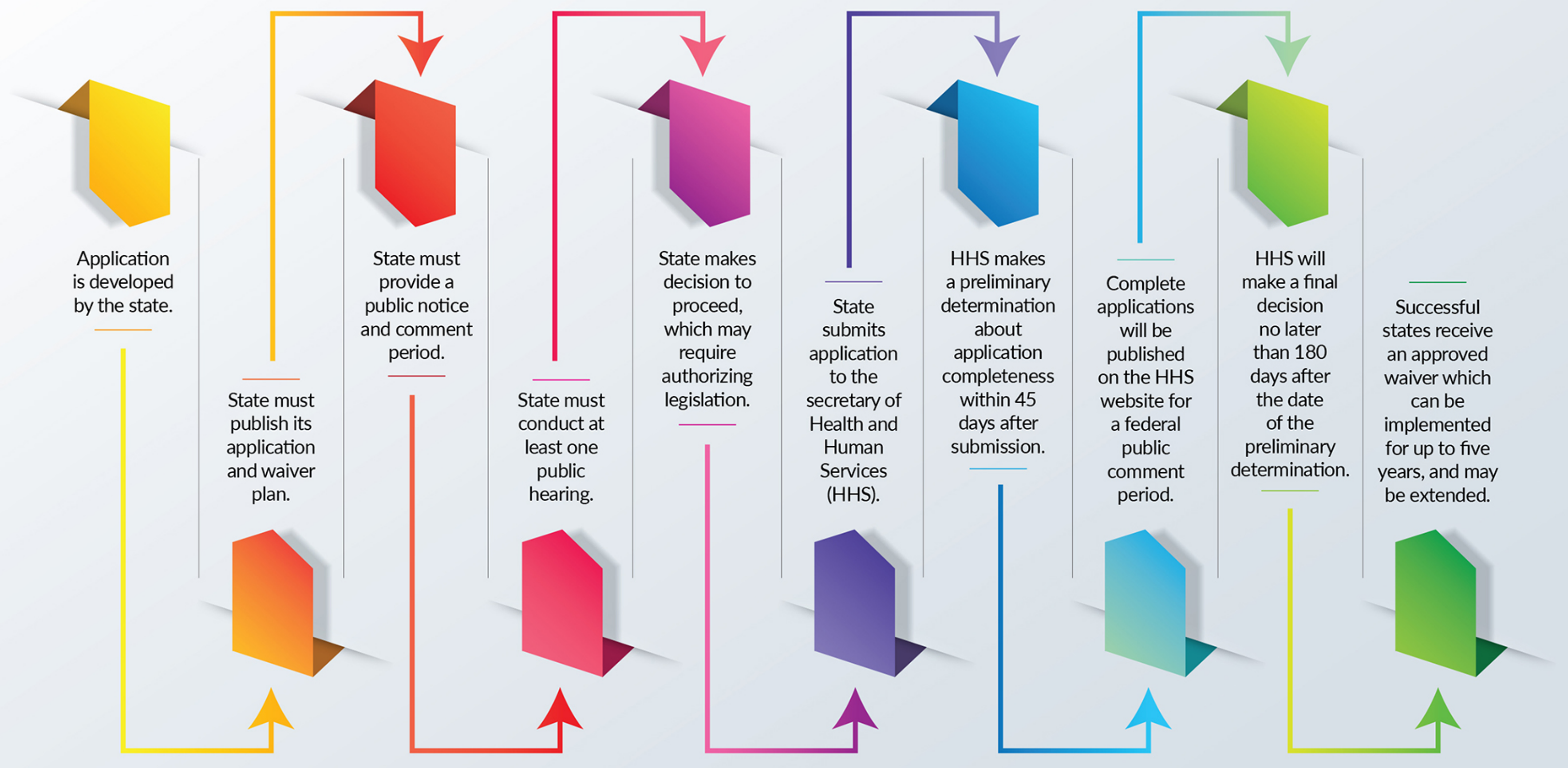
WHAT CANNOT BE WAIVED?

- Pre-existing condition protections;
- Allowable premium rating factors, including age bands;
- Guaranteed availability and renewability of health coverage;
- Risk adjustment; and,
- Eligibility determinations under Section 1411 of the PPACA for premium tax credits (PTC), cost sharing reductions (CSR), Medicaid, and CHIP.

Section 1332 Waiver: Application Checklist

- A list of the ACA provisions that the state wishes to waive and rationale for the requests.
- Data, assumptions, actuarial analyses and certification, and other information documenting and supporting the state's estimates that the waiver plan will meet the comprehinsive coverage, afordability, coverage for comparable number of residents, and budget neutraility requirements.
- A detailed 10-year budget that is fiscally neutral for the federal government.
- A detailed analysis of the waiver plan's impact on health insurance coverage in the state.
- A description of the state's legislation authorizing the implementation of the waiver plan.
- A detailed plan and timeline of how the waiver will be implemented.

Section 1332 Waiver: Application Process



FEDERAL GUIDANCE TO STATES

- In March 2017, HHS issued a letter to all state governors encouraging them to submit Section 1332 waiver applications to address cost and coverage issues in their individual health insurance markets.
- HHS specifically encouraged states to consider implementing a high-risk pool/state-operated reinsurance program to lower marketplace premiums.

FEDERAL GUIDANCE TO STATES

- In October and November of 2018, HHS issued new guidance to states designed to give more flexibility in the design of 1332 waivers and now refers to them as *State Relief and Empowerment Waivers*.
- States are encouraged to reach out to HHS at StateInnovationWaivers@cms.hhs.gov for assistance in formulating an approach that meets the requirements of Section 1332.

FEDERAL GUIDANCE TO STATES

- HHS also identified “five principles for a high-performing health care system” that will be considered when reviewing waiver applications and expressed that states should aim to:
  - Provide increased access to affordable private market coverage;
  - Encourage sustainable spending growth;
  - Foster state innovation;
  - Support and empower those in need; and
  - Promote consumer-driven healthcare.

FEDERAL GUIDANCE TO STATES

The new guidance also provides four “waiver concepts” for states to consider:

- ***Account-based subsidies*** - States can direct public subsidies into a defined-contribution, consumer-directed account that individuals may use to pay health insurance premiums or other health care expenses.
- ***State-Specific Premium Assistance*** - States can create a new, state-administered subsidy program to meet the needs of its population.

FEDERAL GUIDANCE TO STATES

- ***Adjusted Plan Options*** - States could provide financial assistance for different types of health insurance plans, including non-QHPs, to potentially increase consumer choice of more affordable options.
- ***Risk Stabilization Strategies*** - To give states more flexibility to implement reinsurance/high-risk pool programs by waiving the single-risk pool requirement.

THE GOAL OF A REINSURANCE PROGRAM

- Under the ACA, insurers are required to maintain one risk pool for all enrollees purchasing insurance in the individual market
- A reinsurance program can help stabilize the market and reduce premiums for all individuals purchasing coverage by reimbursing insurers for some portion of their incurred claims when they exceed a certain amount

HOW DOES THE PROGRAM WORK

- Reinsurance programs are sometimes referred to as "invisible high-risk pools"
- States will develop a list of high-cost health conditions and then identify enrollees with one or more of those conditions for participation in the program by using a health questionnaire or identify enrollees once they reach a certain claims dollar threshold or "attachment point"

HOW DOES THE PROGRAM WORK?

- On an annual or quarterly basis insurers submit their covered claims cost to the reinsurance program for reimbursement based on “attachment point” and cap, and/or a percentage of the claims
- Example: High-cost enrollees are defined as those with total claims in one year that reach an attachment point of \$15,000. State will then reimburse the insurer for 80 percent of that enrollee’s costs between \$15,000 and \$400,000. Costs above the cap are the responsibility of the insurer.

HOW DOES THE PROGRAM WORK?

- Funding for state-based reinsurance programs typically comes from two sources: contributions from insurers, including premiums or assessments, and government funds (state and/or federal)

PASS-THROUGH FUNDING

- If a state’s waiver is approved and results in savings to the federal government for premium tax credits or small business tax credits, the state can receive those savings as pass-through funding and use them to help fund the cost of implementing the state waiver program.

PREMIUM TAX CREDITS

- Premium tax credits (PTC) are refundable tax credits designed to help eligible individuals and families with annual household incomes of at least 100 percent - but no more than 400 percent - of the federal poverty level (FPL) ($25,100 to $100,400 for a family of four in 2019) to purchase health insurance through health insurance marketplaces created under the ACA.

PREMIUM TAX CREDITS

- When individuals and families enroll in marketplace insurance, they can choose to have the marketplace compute the estimated PTC that is paid to the insurance company to lower their monthly premiums.
- The amount of the PTC is generally equal to the premium for the second-lowest cost silver plan available through the marketplace that applies to individual(s) enrolled in the plan, minus a certain percentage of their household income.

COORDINATED WAIVER APPLICATION ("SUPER WAIVER")

- Federal regulations also authorize states to submit a single "coordinated waiver application" to the Secretary of HHS for a waiver under Section 1332 and under other existing waiver processes, e.g., Section 1115, which will be evaluated independently according to the applicable federal law.

APPROVED SECTION 1332 WAIVERS

- To date, HHS has approved Section 1332 waivers for 13 states. Twelve of the approved waivers were to establish state-based reinsurance programs.
- States that will be implementing reinsurance programs for plan year 2020 include Colorado, Delaware, Montana, North Dakota and Rhode Island.
- States with approved waivers projected reductions in premiums ranging from 5.9 percent to 30 percent.

State Relief and Empowerment Waivers are having an impact!

Premium Impact in First Waiver Effective Year

2018

- -20% ALASKA
- -20% MINNESOTA
- -8% OREGON

2019

- -9% MAINE
- -30% MARYLAND
- -15% NEW JERSEY
- -11% WISCONSIN

2020

- -16% COLORADO
- -20% NORTH DAKOTA

CMS
CENTERS FOR MEDICARE & MEDICAID SERVICES

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THANK YOU
Any questions?

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