

October 23, 2018

## CMS and Treasury Loosen Rules for States to Obtain Section 1332 Coverage Waivers

The Centers for Medicare & Medicaid Services (CMS) and the Treasury Department (collectively, the departments) yesterday issued updated [guidance for states seeking a Section 1332 waiver](#) of certain Affordable Care Act (ACA) requirements. Under Section 1332 of the ACA, states can apply for a waiver of certain requirements as long as they meet certain “guardrails” established in the law related to the comprehensiveness and affordability of coverage, comparability of the number of residents covered and deficit neutrality. This new guidance replaces previous guidance issued by the departments in 2015 and, in doing so, relaxes some of the rules to allow for a broader range of options for states. To account for the changing focus of these waivers, the departments have renamed the waivers “State Relief and Empowerment Waivers.” The departments intend to release more information at a future date that helps illustrate the types of models that are likely to be approved under the new guidance.

**AHA Take: AHA supports the use of waivers to enable states to design coverage programs that work for their state. However, any waiver proposal should be evaluated by not only the ability to expand access to coverage, but the quality of that coverage. We are concerned that these new guidelines could result in the loss of certain consumer protections, particularly related to the comprehensiveness of coverage, as well as destabilize the individual health insurance markets. The AHA will continue to urge CMS to consult with hospitals and health systems in granting waivers to ensure critical stakeholder perspectives are considered.**

### *Key Takeaways*

- The updated guidance will be used to evaluate waivers for plan year 2020 and later.
- Under the new guidance, states will be able to test a broader array of approaches to coverage, including promoting private plans that may offer less comprehensive coverage than what has been available to date.
- The departments have suggested that states could leverage this updated guidance to develop coverage models that expand access to alternative types of private insurance, including association health plans and short-term, limited-duration health plans, both of which the AHA has raised concerns about with respect to comprehensiveness of coverage and other consumer protections.

### SELECT HIGHLIGHTS OF THE NEW GUIDANCE

**Comprehensiveness and Affordability Guardrails.** The comprehensiveness and affordability guardrails are intended to ensure that states do not limit the scope of

benefits or the affordability of coverage beyond what is permissible under the law. Previous guidance interpreted this to mean that, under a waiver, states would need to maintain the same number of individuals enrolled in comparably comprehensive and affordable coverage as without a waiver. Going forward, states will be able to meet this requirement as long as comparable coverage is *available* to the same number of individuals. Individuals who have access to ACA-compliant coverage but choose an alternative plan instead, such as a short-term, limited-duration health plan, will count toward meeting this requirement.

**Comparability Guardrail.** This provision requires states to maintain a comparable number of individuals covered under the waiver, compared to the number of individuals who would have been covered without a waiver. The previous guidance went further, requiring states to consider the effects of the waiver on various subcategories of state residents, rather than in aggregate, in order to ensure that certain populations were not disadvantaged. The new guidance loosens this requirement so that states only need to show comparability across all state residents in aggregate.

**Deficit Neutrality Guardrail.** The deficit neutrality guardrail requires that waivers not add to the federal deficit. The new guidance clarifies how this analysis should be done. Going forward, the 10-year budget plan should provide projected changes to federal spending and revenues for each of the 10 years.

**Additional Waiver Principles.** In addition to the four statutory guardrails described above, future waiver applications will be assessed based on five new principles: providing increased access to affordable private market coverage; encouraging sustainable spending growth; fostering state innovation; supporting and empowering those in need; and promoting consumer-driven health care.

**State Authority.** Federal law requires states to enact or amend a state law in order to apply for and implement a section 1332 waiver. The new guidance clarifies that existing state legislation, combined with a state regulation or executive order, may, in some cases, satisfy this requirement. This provision would provide governors with greater autonomy from the state legislature in advancing a waiver proposal than they had in the past.

## **NEXT STEPS**

Comments are due 60 days after the guidance is published in the Federal Register. If you have further questions, please contact Ariel Levin, AHA senior associate director, state issues, at [alevin@aha.org](mailto:alevin@aha.org).