

State Health Reform Assistance Network

Charting the Road to Coverage

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1332 State Innovation Waivers Under the Trump Administration

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Agenda

- **1332 Basics**
- **What Can be Waived?**
- **Waiver Process**
- **Status of States' 1332 Proposals**

Context for Renewed Interest in 1332

- On March 13th, Secretary Price issued a letter to Governors urging them to apply for 1332 waivers, encouraging states to pursue reinsurance programs and offering “pass through funding” based on federal savings
- Alaska and Minnesota have enacted reinsurance programs and are pursuing 1332 waivers; other states have expressed interest in this market stabilization strategy for 2018 and 2019
- Price’s letter also encourages broader waivers, and Oklahoma recently published a 1332 concept paper that envisions a multi-year strategy to remake the state’s individual market by waiving various ACA provisions, including some proposals that are dependent on federal law changes

Targeted vs. Comprehensive Waivers



Targeted Waivers



Comprehensive Waivers

- Majority of states' 1332 waiver proposals to date
 - ✓ Alaska proposes to use reinsurance to reduce premiums
 - ✓ Hawaii was approved to resolve inconsistencies between ACA and state employer health insurance mandate
- Require actuarial analysis to quantify premium savings and impact of those savings on reducing federal spending on tax credits
- Unclear whether targeted waivers can receive expedited review

- Though some states have considered comprehensive waivers, Oklahoma is first state to propose a package of interrelated reforms
- Address waivable provisions on benefits, subsidies, plan requirements, and exchange platform
- Address other provisions on rating and eligibility that are not waivable under current law
- Could lead to expansion of 1332 authority through combination of Congressional and administrative actions

1332: The Basics

What Can be Waived?

Section 1332 authorizes waivers of four components of the Affordable Care Act

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.

What Can't be Waived?

States may not waive guaranteed issue and related rating rules

Fair play rules

States may not waive non-discrimination provisions prohibiting carriers from denying coverage or increasing premiums based on health status. States are precluded from waiving rating rules that guarantee equal access at fair prices, including age rating and single risk pool requirements.

What Guardrails Apply to Waivers?

Guidance released 12/16/15 established standards for applying the guardrails

1 *Scope of Coverage*

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

2 *Federal Deficit*

The waiver must not increase the federal deficit.

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 *Comprehensive Coverage*

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

Standards Applicable to All Guardrails

HHS and Treasury will review whether the proposed waiver meets each of the guardrails with respect to:



- Impact on all state residents, regardless of type of coverage (Marketplace, employer, Medicaid, etc.), holding the state's Medicaid policies constant
- Vulnerable populations, such as the poor, elderly, and chronically ill
 - Include analysis and supporting data on the number of individuals covered by income, health status, and age, with and without the waiver
- Each year of the waiver

Coverage Guardrail

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

- The same number of state residents (or more) must be “forecast” to have coverage under the waiver as would have coverage absent the waiver
- Coverage refers to Minimum Essential Coverage
- Analysis considers whether waiver sufficiently prevents gaps in coverage



Affordability Guardrail

Waiver must provide coverage and cost-sharing protections so that coverage is as least as “affordable” as Exchange coverage

- Coverage under the waiver must be forecast to be as affordable overall for state residents as coverage absent the waiver
- Compare residents’ net out-of-pocket spending for premium and cost-sharing to their income, with and without the waiver
- Must not increase number of residents with large health care spending burden
- Same number of residents must have access to coverage that provides at least 60% actuarial value and complies with annual maximum out-of-pocket limits
- Consider changes in employer contributions to health coverage or wages



Comprehensiveness Guardrail

The waiver must provide coverage that is at least as “comprehensive” as coverage offered through the Exchange

- Coverage under the waiver must be forecast to be at least as comprehensive overall for residents of the state as coverage absent the waiver
- Coverage refers to scope of benefits provided, measured by:
 - Covering all ten EHB categories (e.g., maternity, mental health and substance abuse)
 - Meeting requirements within each EHB category (e.g., two drugs per class)
 - Medicaid and CHIP benefits, holding Medicaid policies constant



Deficit Guardrail

The waiver must not increase the federal deficit

- Projected federal spending net of revenues with waiver must be equal to or lower than spending net of federal revenues without waiver
 - **Revenue:** considers changes in income, payroll, excise tax, or user fees
 - **Spending:** considers changes in tax credits, CSR, and in Medicaid spending
- Savings generated by other waivers, such as Medicaid 1115 waivers, do not count; savings to other federal programs generated by a 1332 waiver do count
- Waiver must be budget neutral over a ten year budget period
- Waivers not budget neutral in a given year are less likely to be approved



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

- Submit quarterly and annual reports to Treasury and HHS
- Renew waivers every five years, because waiver term may not exceed five years

State Authority

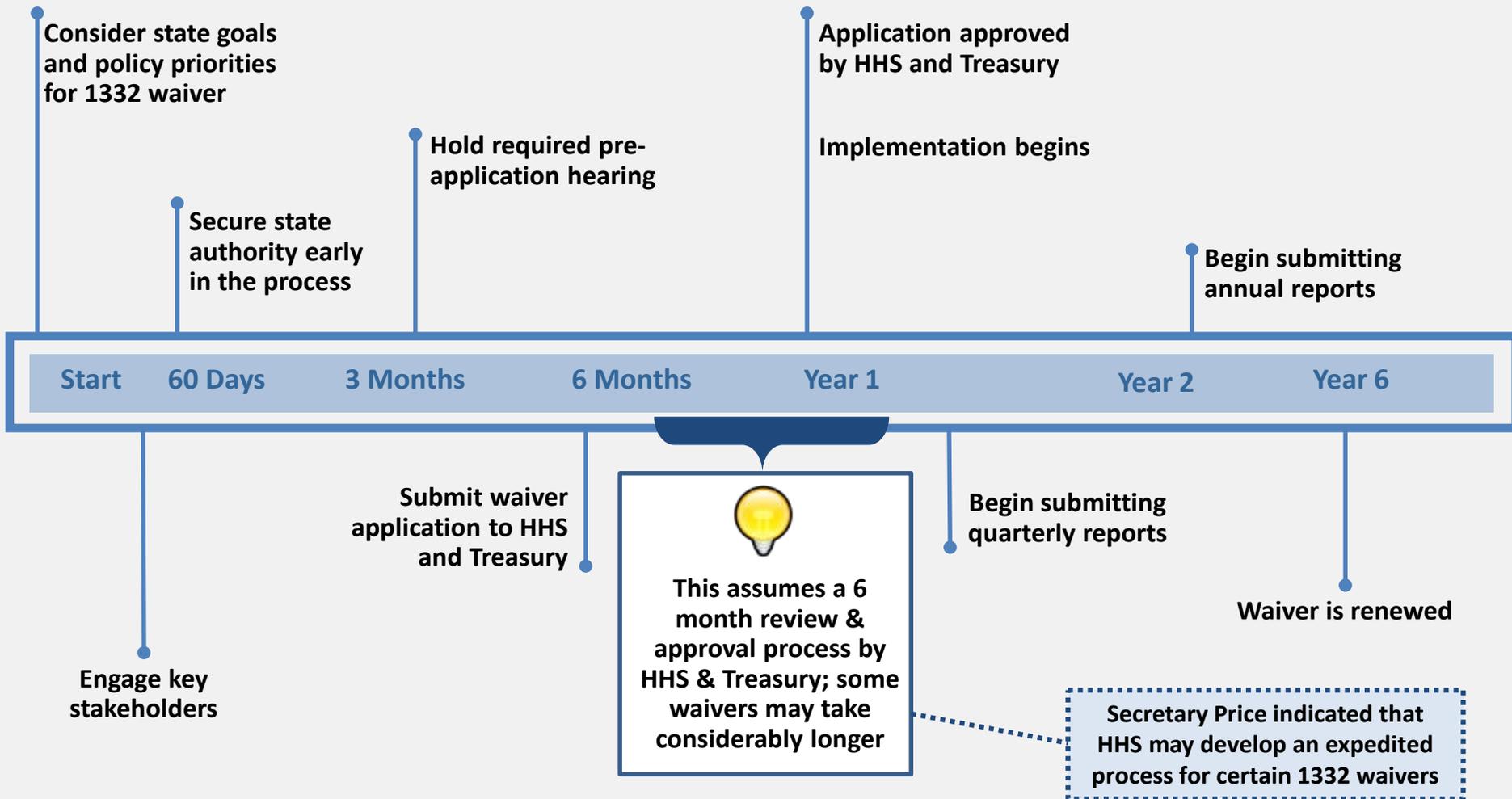


Section 1332 requires that a state have authority under state law to submit and implement a waiver request



States may use preexisting law that grants state authority but safest course is legislation authorizing 1332 waiver

Sample 1332 Implementation Timeline



Overview of State 1332 Activity to Date

States in Varying Stages of Developing 1332 Proposals

State	Status	Primary Elements
Alaska	Pending at HHS	Federal funding for state reinsurance program for individual market
California	Withdrawn 1/18/17	Permit immigrants currently banned from Exchanges to purchase unsubsidized Exchange coverage
Hawaii	Approved 12/30/16	Resolve inconsistencies between ACA and state employer health insurance mandate
Massachusetts	Withdrawn 5/16/16 after CMS said waiver unnecessary to accomplish goals	Preserve Massachusetts' unique premium rating practices for individual and small group markets
Minnesota	<ol style="list-style-type: none"> 1) Established Task Force that made recommendations (2015); no action to date 2) Enacted reinsurance program (4/17) 	<ol style="list-style-type: none"> 1) Legislation to authorize state to pursue public option and related reforms under 1332 2) Federal funding for state reinsurance program for individual market
Ohio	Statute (2015) requires state to apply for waiver, but no action to date	
Oklahoma	White paper published March 2017 (Application to be filed no earlier than 7/17)	Broad changes to coverage, premium, subsidy, enrollment and other rules are contemplated
Rhode Island	Statute (2015) authorizes waiver, but no action to date	Cooperation with other states on exchange operations
Vermont	Application incomplete as of 6/9/16; inactive but could be pursued	Eliminate health insurance exchange for small employers and maintain current system of direct enrollment with insurers

1332 Waiver to Support Reinsurance

Origin of the Idea

- In June 2016, Alaska enacted a \$55 million reinsurance program to address a market crisis; funding source was premium tax, which spreads costs to all lines of insurance
- Result was that single carrier remaining in market revised its 42% rate increase and stayed in market with 7% increase

Federal Role

- After CMS guidance encouraged a waiver application, Alaska applied for 1332 waiver in December 2016, documenting \$51 million in federal savings
- In March 2017, Secretary Price again highlighted Alaska reinsurance program as a 1332 candidate

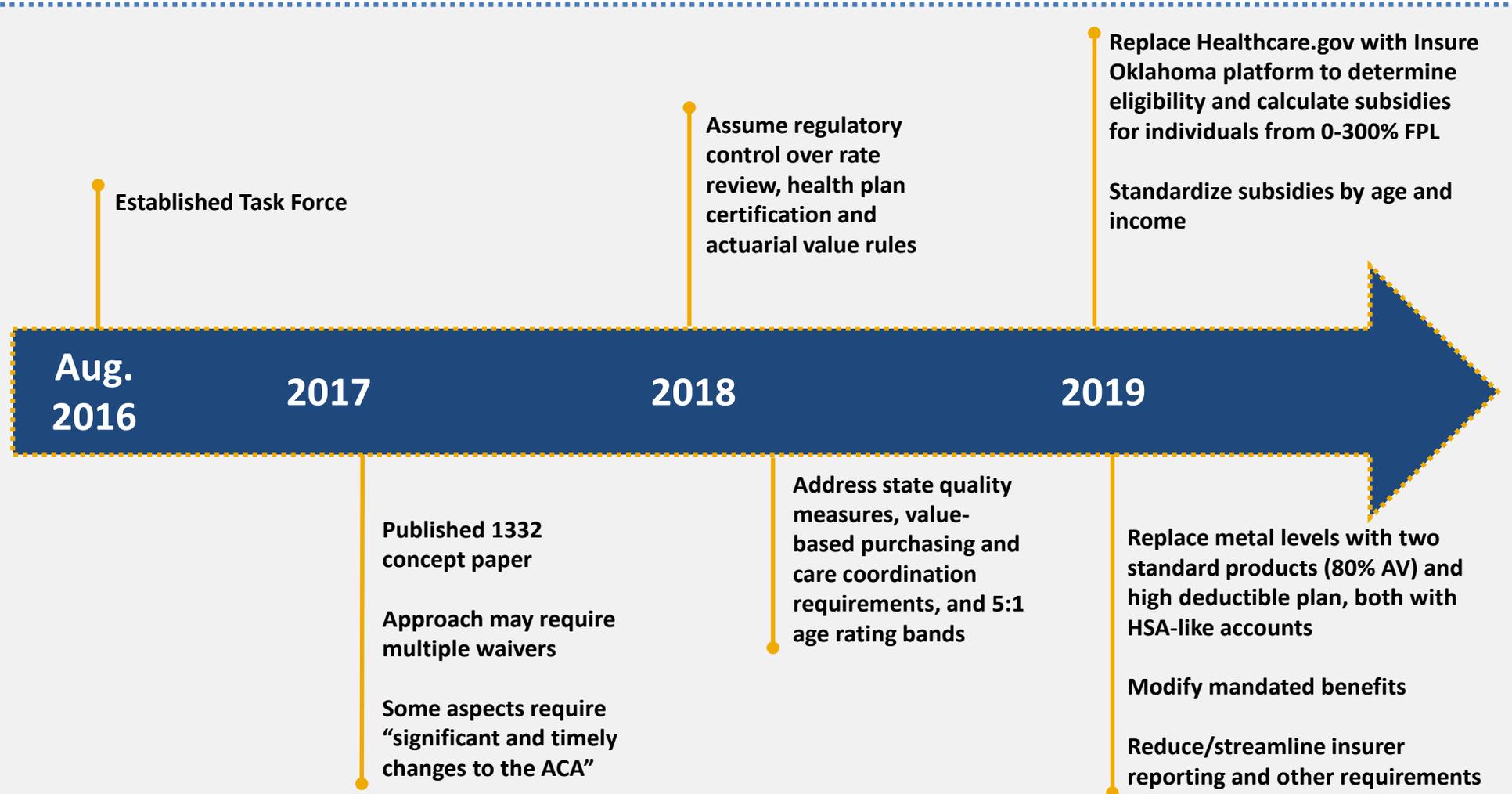
Other States

- Minnesota enacted a \$271 million reinsurance program on April 3
- Other states actively considering reinsurance programs to stabilize their individual markets

Comparing Alaska & Minnesota Reinsurance Programs

Key Features	 Alaska	 Minnesota
Program administration	<ul style="list-style-type: none"> Both states rely on the entity that previously managed state high risk pool to administer program Simplifies set up issues and addresses governance questions 	
Reinsurance financing	<ul style="list-style-type: none"> Funded by premium tax that applies to all lines of insurance 	<ul style="list-style-type: none"> Funded by general fund and health care access fund
 <p><i>Broad-based funding necessary to achieve significant premium reductions</i></p>		
Defining “high risk”	<ul style="list-style-type: none"> Condition-based program (33 high risk conditions) 	<ul style="list-style-type: none"> Claims-based program (80% of claims between \$50,000 and \$250,000)
 <p><i>Both approaches keep high risk enrollees in standard risk pool</i></p>		
Waiver status	<ul style="list-style-type: none"> Filed in Dec. 2016 and will be ready for approval when state funding is made contingent on federal funding (to comply with fiscal guardrail) 	<ul style="list-style-type: none"> Legislation requires waiver to be filed by June 15, 2017 and makes state funding contingent on federal funding

Oklahoma: Another Approach to 1332 Waivers



Discussion

Thank You!

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