



April 18, 2011

## Understanding Health Reform's Waivers for State Innovation

By Jesse Cross-Call

### What are waivers for state innovation?

Section 1332 of the Affordable Care Act (ACA) allows states to request five-year waivers of certain key provisions of health reform, including the individual mandate and the requirement to set up an exchange. To be approved, a "waiver for state innovation" must cover at least as many people as under the ACA and provide coverage that is at least as comprehensive and affordable, at no greater cost to the federal government. The Secretary of Health and Human Services and the Secretary of the Treasury have joint responsibility for approving waivers, which cannot take effect until January 1, 2017.

### What provisions of health reform is a state allowed to waive?

A state may request a waiver from the provisions relating to qualified health plans, essential health benefits, the exchange, premium credits and reduced cost-sharing, and the individual and employer responsibility requirements. By altering these key components of health reform, a state could design a system for expanding health coverage that is very different from what the ACA envisions.

### Would states still receive the ACA-related federal funds they would have received without the waiver?

Yes. If an approved waiver does not provide individuals or small businesses with premium credits or cost-sharing reductions, the state would receive the federal funding it would have received for these purposes in order to help implement its approved plan. The Secretary will determine the amount of "pass through funding" on a year-to-year basis by analyzing the costs of the credits and subsidies in states that are not operating under a waiver.

### How will HHS determine the adequacy of a state's waiver plan?

A number of standards in the state innovation provision are designed to ensure that residents of a state with an approved waiver have access to coverage that is at least as affordable and comprehensive as under the ACA. Some of those standards, however, will need clarification. For example, Section 1332(b)(1)(A) says an approved waiver must provide coverage "at least as comprehensive" as that provided under regular health reform, but since the essential benefits package has not yet been defined, the standard for comprehensiveness under an innovation waiver cannot be defined yet either.

### Will innovation waivers affect Medicaid and CHIP?

It depends on a state's proposal. Section 1332(a)(5) of the ACA requires HHS to develop a coordinated waiver process that will allow a state to submit a single application if its innovation waiver proposal is paired with a Medicaid and/or CHIP waiver. (This is necessary because state Medicaid and CHIP waivers are



# Moving Forward with Health Reform

authorized under Section 1115 of the Social Security Act, which is separate from the authority for innovation waivers.) The innovation waivers are also to be coordinated with HHS' Medicare waiver authority, including waivers to test innovative approaches to managing care for dual eligible populations as provided under the ACA.<sup>1</sup>

## Have any states indicated they will apply for an innovation waiver?

Vermont has declared its intention to pursue an innovation waiver in order to implement a single-payer health care system. The state has recognized, however, that it must continue to pursue core activities that are critical to a reformed system – such as setting up an exchange and modernizing its enrollment and eligibility systems – regardless of whether the state is implementing the ACA or pursuing a waiver.

## How would the Empowering States to Innovate Act change innovation waivers?

The Empowering States to Innovate Act (S.248), introduced by Senators Ron Wyden (D-OR) and Scott Brown (R-MA), would move the start date for innovation waivers from January 1, 2017 to January 1, 2014 and allow states to begin applying for waivers six months after the bill is enacted. The bill does not change the requirement that a waiver provide equivalent coverage to at least as many state residents as the ACA would. If the Empowering States to Innovate Act becomes law, however, it is difficult to see how the Secretary of HHS could determine that the coverage is equivalent before key concepts like essential health benefits are defined and more is known about the cost of coverage in state exchanges.

## How can a state apply for an innovation waiver?

On March 14, HHS released proposed rules on the application process and other procedures regarding innovation waivers.<sup>2</sup> Before a state may submit a waiver, its legislature must pass legislation authorizing the state to apply for a waiver, and the state must receive public comments on its proposal. In addition, the state's proposal must include a list of the sections of the ACA the state desires to waive, its specific plans to offer coverage as comprehensive and affordable as under the ACA, and a detailed ten-year budget that is deficit neutral to the federal government. The applicable Secretary or Secretaries will have 180 days to make a determination on a state's submitted waiver application. Comments on these proposed rules are due May 13, 2011.

---

<sup>1</sup> Section 3021 of the ACA created Section 1115A of the Social Security Act, which establishes the Center for Medicare and Medicaid Innovation for the purpose of testing "innovative payment and service delivery models."

<sup>2</sup> See *Federal Register*, "Application, Review, and Reporting Process for Waivers for State Innovation," March 14, 2011 at <http://edocket.access.gpo.gov/2011/pdf/2011-5583.pdf> for a copy of the proposed rules.