

# The 2017 State Innovation Waivers Are Coming. Here's What You Need to Know.

It's not too soon to think about the 2017 State Innovation Waivers. These Section 1332 waivers are designed to give states additional flexibility in how they implement key elements of the Affordable Care Act (ACA).

In this HMA Q&A, Health Management Associates Principal Tony Rodgers outlines how states can utilize 1332 waivers – ranging from simple fixes that address specific unintended consequences caused by ACA

**Let's start with some background. What's the difference between the 1332 State Innovation Waivers available in 2017 and the long-standing 1115 Research and Demonstration Project waivers?**

**Tony Rodgers:** Section 1332 State Innovation Waivers, with the approval of the Secretary for Health and Human Services (HHS), allow states to modify the requirements of the ACA and make innovative modifications that expand coverage or provide more affordable options for individuals and small businesses through the state-level marketplace.

The 1115 waivers have been used by states primarily to modify the requirements or coverage features of their Medicaid program.

**What are some practical considerations in planning and implementing a 1332 waiver?**

**Rodgers:** First, states will need to engage stakeholders and develop a plan. The plan must identify the goals and rationale for the proposed changes – including the impact on benefits, the health insurance model and policy. The plan must also include a 10-year forecast of the projected costs associated with waiver proposal.

Once the waiver authority is approved, the state will be given up to five years to demonstrate that the changes have met the goals articulated in the plan. If successful, the state can be granted approval to continue its waiver. Implementing and executing a significant change in the state-level health insurance marketplace is not a simple undertaking. States will need to have broad support, legislative authority, and the assistance of health



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requirements to the potential for creative experiments designed to expand healthcare access.

insurance plans that can operationalize changes to coverage features, benefits, and policy.

In summary, states will need to engage stakeholders, develop a plan, build actuarial models and financial forecasts, and have the expertise to ensure successful implementation. The success of a 1332 waiver program will depend on whether waiver innovation meets ACA requirements for affordability, comprehensiveness of coverage, and budget neutrality. Unlike 1115 Medicaid waivers, states have no general fund matching requirements; in other words states will have to develop and implement changes without federal financial participation.

Either the governor or legislature will need to lead the charge to align state regulations and authority with the proposed waiver changes. Getting all the key stakeholders to the table and achieving consensus can be challenging. To develop and organize all the required elements that go into a plan can require a significant investment in time, state executive leadership, and political capital. The logical point person would be the state insurance commissioner. In some states this is a separately elected post with its own political agenda.

**And that brings us to the political considerations.**

**Rodgers:** Politically, state governors and legislative leadership must calculate the value of the proposed waiver to their residents and constituents. Using waivers to overturn the foundational elements of the ACA health insurance marketplace will be a non-starter for the Secretary of HHS.

The political calculation is whether to wait and see what the next Congress and administration does with the ACA or start developing a state level waiver proposal on the assumption that the next Congress and administration will not significantly amend the current version of the ACA. Health insurance reform can be a tricky political issue because it impacts individuals, working families, and small businesses. Anything a state tries to do beyond a tweak here and there is going to have high visibility nationally, which will embroil the state in the national political dialogue and discourse centering on “ObamaCare.”

### **Why would a state take the trouble of going down this road? Who benefits?**

**Rodgers:** Every state has a different set of economic, regulatory, and market factors that influence the uptake of health insurance in the individual and small group markets. If a state has strong stakeholder interest and support and has an innovative approach to expanding affordable coverage, a 1332 waiver would provide a real option for the state to increase access to affordable health insurance. Personally, I think there are exciting opportunities to innovate “three share” type health insurance plans that wrap Medicaid coverage around premium health insurance benefits for low income individuals and families, or innovative ways to incorporate new wearable cost saving mobile and remote technologies into benefit structures.

### **What are some examples of 1332 waivers states are most likely to pursue?**

**Rodgers:** Although it is a little early to tell which states will apply for waivers, I expect the range of waiver proposals will go from “single payer” type proposals to waivers to allow the creation of “consumer driven” high deductible insurance products. However, I am hoping some states take advantage of 1332 waivers to truly innovate coverage and benefits options that make health insurance more attractive to “young invincibles” and the “health insurance resisters.” I think the areas of health insurance innovation that have the most potential to expand the uptake to affordable coverage is in the areas of provider network design, introductory transitional health insurance products, and the development of product loyalty incentives as part of benefit designs.

The concept of using provider network design as a specific health plan product option is not new. For example, the option of selecting an open network, “preferred network,” or HMO managed network is typical

in the health insurance market. I would like states to go farther and include “intelligently designed network” insurance products – specifically to incorporate the best performing healthcare networks into an innovative health insurance product design. Creating a health insurance product around the best performing networks would reward high performing health systems and providers and give consumers a value-based choice of the best performing providers.

Another option is using 1332 waivers to develop a low-cost introductory and transitional benefit to go along with what is currently offered on the insurance marketplace. The target of an introductory health insurance product with a basic benefit would be to capture those who say that health insurance benefits offered in the marketplace are still too expensive for them to purchase. An introductory product would have a limited set of key benefits and would only be available to an individual for a limited time. The goal would be to introduce the value of health insurance coverage to individuals that resist purchasing health insurance. An introductory benefit would not replace the current benefit but add a transitional benefit plan.

There also seems to be interest in incentives around health and wellness – potentially with part of the savings in the overall cost of care going back to health insurance subscribers. To expand on this idea, another innovative waiver element would be the development of structured benefit enhancements to reward consumer loyalty and continuous coverage – for example, providing enhanced benefits based on the number of years that a consumer has had continuous coverage. Such an approach makes sense because the longer the person is insured the better managed their health should be. Americans love frequent flyer rewards and incentives or special perks for loyalty. Incorporating the consumer’s interest in such earned benefits would be another innovative health insurance design element that could be part of a waiver proposal.

### **How much leeway will HHS allow states in designing a 1332 waiver?**

**Rodgers:** In the short-term, I think HHS will be very open to waivers that meet the requirements of making health insurance more affordable and demonstrating that more individuals will have access to coverage. This administration has been very flexible with how states can expand Medicaid coverage. I think they will be open to true health insurance innovation.

Longer-term, it's more difficult to predict. It will depend on who is in the White House and what changes if any are made to the structure of the ACA. Complicating matters is the fact that many states chose to default to the federal health insurance exchange instead of developing a state-based exchange. This could limit the state options if they are on the federal exchange. State specific waiver changes might be too administratively burdensome for the federal health insurance exchange to implement.

**Prior to joining HMA, you were deputy administrator at CMS and worked on the State Innovation Models Initiative (SIM), which helps states plan and design multi-payer accountable care delivery systems and payment reforms. What lessons are applicable to the State Innovation Waivers?**

**Rodgers:** I think there are several lessons learned from SIM that states could apply in developing their waiver. First, the importance of executive leadership from the Governor cannot be underestimated. Second, the engagement of key stakeholders and public engagement is critical. Third, political alignment of the state legislature to the required changes proposed is essential. Fourth, having a well thought out plan for implementing the proposed changes is necessary. And fifth, making sure those impacted by the changes are on board is essential – whether that is the consumers, employers, health plans or providers. You do not want to be fighting a backlash

while you are trying to implement change in the health insurance market.

**Finally, we saw the Republicans win big in the midterm elections. What implications might this have on the use of 1332 waivers?**

**Rodgers:** My political crystal ball predicts that Republican legislators are less likely to come forward with significant waiver proposal changes to the health insurance marketplace, at least not until after the next presidential election. If Republicans propose health insurance marketplace changes, those proposals would serve to say they believe that the ACA and its health insurance marketplace reforms are here to stay. I am of the school of thought that state Republicans will wait until the next administration is in place before considering any changes through waivers. I think the focus will remain on fighting the expansion of Medicaid at the state level. Those statehouses and Governors who are less adverse to the ACA are the ones most likely to propose innovative 1332 waivers to improve affordability and the uptake of health insurance. But even those states will think twice about putting together a 1332 plan that ultimately would have to be supported by the next administration until they have a better sense of the political environment after 2106. On the other hand, I do expect states to continue to use 1115 waiver in creative ways to expand Medicaid.