State Innovation Waiver Options
Exploring a Section 1332 Waiver for Massachusetts

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• Introductions

• Today’s goal: Overview of Section 1332 Waivers and Envisioned Process for Consideration
  – Waiver content
  – Waiver process
  – Examples of waiver possibilities
  – Next steps and discussion
Overview of ACA Section 1332

- Affordable Care Act Section 1332 creates a new option for states called an “innovation waiver”
- This waiver gives states flexibility to modify portions of the ACA, and instead pursue alternative paths to the overall goal of the law: expanding access to health coverage
- Waivers can:
  - Be broad or narrow, within the parameters set by Sec. 1332 and final regulations published in 2012
  - Take effect starting January 1, 2017
  - Allow a state to receive the federal subsidies its residents would have received, if the state gets approval to use the funds differently

Sound Familiar?
- MassHealth has long operated under “1115” and “1915” waivers that grant state flexibility
- MassHealth has received an ACA grant called the State Innovation Model
Section 1332 Basics:
What Can Be Waived?
## Areas for State Flexibility

<table>
<thead>
<tr>
<th>ACA Topic &amp; Citation</th>
<th>Examples of Provisions That May Be Waived <em>(see handout)</em></th>
</tr>
</thead>
</table>
| Benefits and Exchange Subsidies | - Essential Health Benefits  
- Cost-sharing limitations  
- Metallic tiers  
- Individual and group market definitions  
- Premium tax credits and cost-sharing reduction subsidies |
| Exchanges and Qualified Health Plans | - Exchange structure and role  
- Eligibility for Qualified Health Plans  
- Criteria for Qualified Health Plans |
| Individual Mandate and Employer Mandates | - Minimum essential coverage requirement  
- Tax penalty for individuals who fail to maintain coverage  
- Tax penalty for employers who fail to maintain coverage for their full-time employees |

* A state may combine its 1332 waiver with a 1115 Medicaid waiver – for example, to streamline coverage for lower-income populations
Some Provisions Cannot Be Waived

- Section 1332 does not extend to other portions of the ACA, such as:
  - Insurance market reforms, such as nondiscrimination
  - Rating factors applicable to merged market
  - Risk-spreading mechanisms, such as risk adjustment
  - Revenue provisions, such as the “Cadillac Tax”

- All Section 1332 waivers must meet four “guardrails”:
  - **Scope of Coverage**: Must provide coverage to at least as many people as the ACA
  - **Comprehensiveness**: Must provide coverage at least as “comprehensive” as Exchange
  - **Affordability**: Must provide “coverage and cost-sharing protections against excessive out-of-pocket” spending at least as affordable as Exchange
  - **Federal Deficit**: Must not increase the federal deficit
Section 1332 Process
How Can a State Apply for a Waiver?
Steps in Waiver Process

**State Planning**
- Determine if waiver is needed to achieve policy goals
- Obtain legislative authority to apply for and implement a waiver
- Draft waiver application, including:
  - Rationale
  - Actuarial and economic analysis
  - Implementation timeline
  - 10-year budget
- Provide a meaningful public notice and comment period, including:
  - Pre-application hearings
  - Consultation with tribes

**HHS Approval**
- Coordinate with Treasury
- Conduct a preliminary review for application completeness within 45 days
- Conduct federal notice and comment period
- Review and approve or reject the application within 180 days of deeming complete (runs concurrent with federal notice and comment period)

**Implementation**
- Waiver may be implemented starting in 2017 and can last 5 years, with option of renewal
- Waiver may be amended
- State must hold a public forum within 6 months of implementation
- State must submit quarterly and annual reports to HHS
- HHS must conduct periodic evaluations
- Either state or HHS can suspend or terminate waiver, with limited close-out costs awarded to state
Sample Timeline: 1/1/17 Start

An earlier start date could be appropriate for policy options that are limited in scope:

10/1/15
- Policy development
- Stakeholder dialogue
- Seek preliminary legislative approval

11/1/15
- Draft application available for public review
- Public hearings
- Tribal consultation

12/1/15
- Secure preliminary legislative approval
- Submit application
- 45-day review period by HHS

7/15/16
- Secure detailed legislative approval
- HHS approves application
- Begin implementation

1/1/17
- Waiver begins

1/1/16
- HHS deems application complete
- Seek more detailed legislative authority
- Start of 180-day federal review period

10/15/16
- Open enrollment begins (implementation complete for any changes needed for open enrollment 2017)

1/1/17
- Waiver begins
A later start date could be appropriate for policy options that require in-depth study or implementation:
Section 1332 Considerations
What Kind of Policies Can States Pursue?
State Activity to Date

• Several states have launched Section 1332 efforts:
  – Rhode Island, Hawaii and Minnesota have passed preliminary legislation
  – California, Arkansas, and New Mexico have taken public steps to explore
  – Hawaii was first to post a draft waiver, on Sept. 9

• Content of state discussions varies widely:
  
  **HI**
  Draft application seeks to waive SHOP, given long-standing “Prepaid Act” employer mandate

  **CA**
  Senate passed a bill allowing state to apply for waiver that would permit immigrants who otherwise would not have access to the Exchange to do so

  **AR**
  Consultant’s report to Legislature considered using a combined 1332 and 1115 waiver to support its “Private Option” model for Medicaid
Considerations for Massachusetts

Opportunity to build on Massachusetts’ unique history of reform:

- Revive successful components of Ch. 58?
  - Aspects of our previous subsidized coverage program that we should return to?
  - Draw from our experiences with state-based individual and employer mandates as we consider those policy areas?

- Work to streamline and align coverage experience for Health Connector and MassHealth enrollees?

- Complement cost-reform efforts of Ch. 224?

- Build on previous successes (and lessons learned) with new vision?
Next Steps
How To Be Involved
The Road Ahead

- Committed to open stakeholder process and welcome feedback on proposed process
- Upcoming topical policy working group meetings: Health Connector Board Room (5th Floor of CCA Offices at 100 City Hall Plaza, Boston, MA)

<table>
<thead>
<tr>
<th>Date</th>
<th>Topic</th>
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<tbody>
<tr>
<td>Open discussion # 1</td>
<td>▪ Individual mandate</td>
</tr>
<tr>
<td>Friday, Oct. 16, 9-11 AM</td>
<td>▪ Employer mandate</td>
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<tr>
<td>Open discussion # 2</td>
<td>▪ Exchange and qualified health plan structure</td>
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<tr>
<td>Friday, Oct. 23, 9-11 AM</td>
<td>▪ Individual and group market structure</td>
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<td></td>
<td>▪ Essential health benefits</td>
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<tr>
<td>Open discussion # 3</td>
<td>▪ Exchange subsidies</td>
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<tr>
<td>Friday, Oct. 30, 9-11 AM</td>
<td>▪ Exchange eligibility</td>
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<tr>
<td>Roll-up and next steps</td>
<td>▪ Roll-up of discussion to date</td>
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<tr>
<td>Friday, Nov. 6, 9-11 AM</td>
<td>▪ Revisit timeline for application, including topics for in-depth sessions</td>
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<tr>
<td>In-depth discussion # 1</td>
<td>▪ Topic TBD based on earlier sessions</td>
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<tr>
<td>Friday, Nov. 13, 9-11 AM</td>
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<tr>
<td>In-depth discussion # 2</td>
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<td>In-depth discussion # 3</td>
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<tr>
<td>Wed., Nov. 25, 9-11 AM</td>
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State decision on whether to aim for 1/1/17 start date or later start date
The Road Ahead (cont’d)

In the meantime…

- Add your name to the stakeholder distribution list, including language or disability accommodation requests
- Request an individual meeting or discussion with your group
- Submit written comments with your priorities, suggestions, and data/support (note: written comments will be posted) to StatelInnovation@massmail.state.ma.us

To Stay Informed:

- Meeting information, materials and other information will be posted regularly to our dedicated State Innovation Process Website: www.MAhealthconnector.org/innovation-waiver
Key Resources

Federal Guidance


Massachusetts Resources

- Health Connector 1332 Hub: [www.MAhealthconnector.org/innovation-waiver](http://www.MAhealthconnector.org/innovation-waiver)
- BCBS Foundation/Manatt White Paper: [www.manatt.com/uploadedfiles/content/5_insights/white_papers/coverageoption_sforma.pdf](http://www.manatt.com/uploadedfiles/content/5_insights/white_papers/coverageoption_sforma.pdf)
Questions? Ideas? Reactions?

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