

Date: JULY 13, 2015

TO: Connect for Health Colorado Board of Directors

From: Kevin Patterson, Interim CEO, Connect for Health Colorado

RE: Opportunities for a Utilizing Section 1332 Innovation Waiver

This memo provides an overview and update from Connect for Health Colorado staff regarding the state innovation waiver provided under section 1332 of the Affordable Care Act (ACA) referred to in this document as the 1332 waiver, available to states beginning January 1, 2017. This memo will outline what the 1332 waiver allows and opportunities it may afford Connect for Health Colorado to provide a more seamless consumer experience and to continue to help Colorado become the healthiest state by supporting the expansion of coverage and access to health insurance.

Background

Connect for Health Colorado (the Marketplace) was established through bipartisan legislation in May of 2011 to increase access, affordability, and choice to individuals, families, and small businesses in Colorado. Since our doors opened on October 1, 2013, we have enrolled more than 150,000 Coloradans and our customers received more than \$250 million dollars in 2014 alone in tax credits to help pay for private health insurance. The Marketplace has also helped thousands of Colorado residents enroll in public health insurance through Medicaid and CHP+.

The federal 1332 waiver authority is intended to offer states flexibility to tailor certain provisions of the ACA; so long as the state preserves the ACA's coverage and fiscal parameters. Section 1332 of the ACA allows states to waive the following core requirements¹:

1. **Individual Mandate.** States can modify or eliminate the tax penalties on individuals who fail to purchase or maintain health insurance coverage.
2. **Employer Mandate.** States can modify or eliminate the penalties on large employers who fail to offer affordable coverage to their full time employees.
3. **Health Plan Benefits and Premium Subsidies and Cost-Sharing Reductions.** States may modify the rules governing covered benefits (known as the Essential Health Benefits) and premium subsidies (Advance Premium Tax Credit, APTC). States that reallocate premium tax credits and cost-sharing reductions (CSR) may receive the aggregate value of those subsidies for alternative approaches.

¹ ACA §1332(a)(2)

4. **Qualified Health Plans (QHPs) and Marketplaces.** States can modify or eliminate QHP certification and the Marketplace function for determining eligibility for tax credits or enrollment.

To qualify for a 1332 waiver, the State must show the federal government (US Department of Health and Human Services and if applicable, the US Treasury Department) that the waiver will provide coverage that²:

1. Is at least as comprehensive as ACA coverage,
2. Is at least as affordable as ACA coverage,
3. Covers at least as many residents as the ACA would have covered, and
4. Will not increase the federal deficit.

It is important to note that the non-discrimination provisions that prohibit a carrier from denying coverage or increasing premium amounts based on medical history (also known as guaranteed issue) cannot be waived. In addition, a 1332 waiver would not apply to the Medicaid program. Any waiver for the Medicaid program would be requested through section 1115 and Title XIX of the Social Security Act and submitted by HCPF.

Opportunities

Coverage for lower-income individuals currently consists of multiple programs known as Insurance Affordability Programs (IAPs) — available through Medicaid, CHP+, and Advance Premium Tax Credits (APTC)/Cost Sharing Reductions (CSR) available through the Marketplace. These programs are administered by the Department of Healthcare Policy and Financing (HCPF), county agencies, and the Marketplace.

As the Marketplace and its partner agencies continue to work to implement program changes and systems that support the state's new coverage landscape under the ACA; challenges and opportunities have and will continue to be identified. The information below identifies possible solutions to those challenges at a high level, but is not intended to be comprehensive. These opportunities will require continued discussion with our Board, the Legislature, partner agencies, carriers, and other stakeholders.

The ACA has made steps to simplify and streamline eligibility, verification, and enrollment factors across IAPs, but some differences still remain. Due to differing eligibility criteria, members in the same household can be eligible for different IAPs; reporting income for an eligibility determination can be difficult for certain individuals—specifically the self-employed or seasonal worker; and changes in life circumstances can lead to individuals moving in and out of IAPs. For the customer these differences have resulted in confusion, coverage disruption, and may delay enrollment. For the Marketplace and its partners these differences have resulted in complicated messaging, system challenges, administrative burdens, and increased costs.

² ACA §1332(b)(1)

A 1332 waiver can be leveraged to create consistency and align regulations related to eligibility, verification and enrollment for Medicaid, CHP+, and APTC/CSR. Aligning regulatory requirements would help the customer experience by allowing us to simplify how we talk about these programs, mitigate inaccurate information provided by our Customer Support Network, reduce coverage disruptions, and increase timely enrollment transactions. The following areas are examples of where we can explore alignment in conflicting regulations:

1. Using one method for counting income and for determining household size,
2. Using one method for determining date of eligibility/enrollment, and
3. Using one method for verifying applicant eligibility.

Recommendation

The Marketplace and HCPF have made investments to streamline eligibility and allow more applicants to go through the eligibility process in a timely fashion. The Marketplace has also made investments to enhance customer service by contracting with a Medical Assistance site, consolidating Customer Service Center vendors, and aligning with the State's customer relationship management system. We believe these investments are a step in the right direction. However, the Marketplace would like to continue to explore solutions that create consistency in regulatory program rules to enhance the consumer experience and satisfaction, reduce gaps in coverage, and lessen administrative complexity. In addition to exploring the 1332 waiver, we will also assess whether there are other tools available to meet any identified goal. Changing or creating legislation, state rules or an Executive Order may be more efficient, and if an opportunity for change is identified, analysis should be done to determine the best tool for implementation.