

OVERVIEW

As part of the Affordable Care Act, states can apply for Section 1332 State Innovation Waivers to modify certain provisions of the Affordable Care Act based on guidelines set forth by the federal Department of Health and Human Services. Section 1332 waivers can be effective as early as January 1, 2017. They must meet several federal requirements related to affordability and coverage and must not increase the federal deficit over 10 years. To apply for a 1332 waiver, states are required to enact legislation to provide waiver authority and must submit an application that includes economic, actuarial, and budget analysis, in addition to a thorough analysis of how the waiver is consistent with federal requirements noted above.

Covered California has received input on potential 1332 waiver proposals over the past three months, held a public webinar on the structure and guidelines for waiver on January 26th, held an open forum that included Jennifer Kent, Director of the California Department of Health and Human Services and two Covered California Board members (Diana Dooley and Veva Islas) on February 23rd to hear from health care experts and members of the public about potential waiver proposals and has had an open process for receiving comments and suggestions. A summary of the February 23rd meeting and presentation materials are available [here](#). In response to the invitation to members of the public to submit written comments with details of their proposed options including how the options meet federal waiver requirements, we received a total of 12 comment letters from a range of groups including consumer advocates and trade associations. Those comments are available [here](#).

This *Analysis and Report on California's 2016 Section 1332 State Innovation Waiver Proposals* (the "*California 2016 Waiver Report*") is intended to provide a summary for Covered California's Board, the California Department of Health Care Services, the California Legislature and interested parties on the major proposals and the analysis by Covered California of those proposals as they relate to the federal guidance, as well as the waiver framework that was reviewed by the Covered California Board. The *California 2016 Waiver Report* does not include analysis of all potential proposals – which can be found in the detailed comments that are linked to this report. In addition, in most cases, in the event that the California Legislature and the Administration decide to proceed with a waiver proposal, Covered California would need to conduct more detailed financial and operational analysis – which we stand prepared to do.

COVERED CALIFORNIA'S WAIVER FRAMEWORK

As presented during the February 23rd forum, Covered California is committed to engaging in continuous improvement efforts within its existing federal and state authority that do not require a waiver, such as revising the certification, selection and contractual requirements for Qualified Health Plans (QHPs), analyzing how Covered California's enrollees are receiving care by sponsoring a claims database, modifying standard benefit designs to continue to promote timely access to care without undue financial burdens, and promoting delivery reform.

The primary focus of Covered California is the continued effective implementation of the Affordable Care Act in California. Pursuing a 1332 waiver would require considerable staff time

and resources to vet and craft the application, which will divert resources for improvements and advancement that are possible independent of getting a waiver. In considering whether to pursue a 1332 waiver, the following factors should be considered:

- Proposals should be directly related to Covered California's mission.
- Proposals should achieve cost savings or administrative simplification for Covered California's enrollees and potential enrollees, for Covered California and for the providers and health plans we contract with.
- Given Covered California's existing strategic priorities, the primary focus of a waiver should be to improve processes rather than completely redesign them.

Proposals that violate the U.S. Treasury's budget neutrality requirement or add liabilities to California's general funds should not be considered.

EXPERT TESTIMONY AND PUBLIC COMMENT ON SECTION 1332 WAIVER OPTIONS

During the February 23rd forum, expert panelists presented information on waiver guidelines and opportunities, market and coverage trends, and specific waiver ideas for California. It was noted that federal guidance released in [December 2015](#) significantly limits potential waiver opportunities for states by placing restrictions on how waiver savings can be calculated, particularly between an Exchange and the state's Medicaid program, as well as restrictions on the structure and distribution of federal premium assistance. Most panelists recommended that Covered California consider a phased approach to the 1332 waiver opportunity by considering one or two target proposals for 2016, while pursuing broader programmatic changes in future years when subsequent federal guidance might offer states more flexibility for innovation. Themes that emerged for consideration included expanding coverage to additional populations such as undocumented Californians (more detail below) and individuals who are not subsidy eligible today due to the so-called "family glitch", as well as opportunities to improve affordability for individuals who are currently eligible but might have trouble paying for coverage.

Regarding the proposal to allow undocumented Californians the ability to buy non-Qualified Health Plans (non-QHPs) that "mirror" Covered California QHPs, there were significant public comment in support and rationales stated regarding the benefits to "mixed families" – those with both documented and undocumented family members. These non-QHPs would not be subsidized with federal premium assistance or cost sharing subsidies.

Public comment in favor of this proposal noted that by offering non-QHPs for undocumented Californians, all members of mixed immigration status families would be able to apply for coverage directly through Covered California, thus simplifying their health insurance shopping and enrollment experience. At the same time, there was not conclusive data presented regarding the demand for enrollment in Covered California from undocumented Californians who would not get a subsidy, but can currently enroll in unsubsidized coverage in the individual market off-exchange. Expert opinion was that there could in theory be an increase in overall enrollment in Covered California due to mixed families being more likely to apply through one-stop shopping and because of reduced fears related to immigration status of undocumented

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family members. The very rough estimate on this potential enrollment given at the hearing was 50,000. This proposal was considered in the Legislature last year, and many participants in Covered California's forum recommended it as a targeted option that could be pursued in 2016.

Additional public comments for consideration in future years included increasing affordability, enhancing benefits or plan offerings, smoothing subsidy cliffs, aligning rules between Covered California and Medi-Cal, and restructuring small business tax credits. Written comments expanded upon several of these ideas. We note that some proposals, such as offering more plans for small businesses and modifying the eligibility system, would not require a waiver. In addition, some proposals, such as changing the password requirement for online applications, could not be accomplished through a waiver because the underlying federal rules are not in "waivable" sections of the Affordable Care Act.

COVERED CALIFORNIA ANALYSIS

Several written proposals contained sufficient detail for Covered California to provide initial analysis. Analysis of those proposals is presented in Table 1 below, with emphasis on how the proposals might or might not meet the following federal "guardrail" and Covered California requirements:

- Coverage – Under the waiver, a comparable number of state residents must be forecast to have coverage as would have coverage absent the waiver.
- Affordability – The coverage under the waiver must be forecast to be as affordable for state residents as coverage absent the waiver.
- Comprehensiveness – The waiver must not decrease the number of individuals with coverage that satisfies the requirement of Essential Health Benefits (EHBs).
- Deficit Neutrality – The waiver must not increase the federal deficit over the period of the waiver or the ten-year budget plan submitted by the state as part of the waiver application.
- Administration – The waiver should seek to achieve cost savings or administrative simplification for Covered California's enrollees and potential enrollees, for Covered California and for the providers and health plans we contract with.
- State Budget Neutrality – The waiver must not add to state general fund liabilities.

As noted above, all proposals would require extensive economic, actuarial budget and legal analysis prior to submission of a waiver application. Proposals not analyzed below require further definition over time before initial analysis can begin.

NEXT STEPS

To the extent the California Legislature and the Administration decide to pursue a 1332 waiver, Covered California staff strongly support a phased approach, as was advanced by expert panelists and the public during the February 23rd forum. A phased approach would entail considering only very focused limited waivers this year, while considering the potential of different waiver proposals in future years – which may also reflect updated federal guidance. Should state legislation be enacted in 2016 to authorize California to submit a waiver, the

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application will require significant staff time and resources to develop. Even proposals that have received initial vetting, such as the proposal to offer non-QHPs to undocumented individuals, will likely take additional time in the coming months to develop into a full waiver application. Once the application is submitted, the federal government will have up to 180 days to review the waiver application prior to approving or denying it. While Covered California staff stand ready to pursue a waiver application if state legislation is enacted, limited time is available to submit a waiver application in 2016. Covered California staff will provide recommendations to the Board for a process to consider additional waiver proposals in future years.

Table 1. Analysis of Section 1332 State Innovation Waiver Proposals

Option	Description	Guardrail Observations	Conclusions
<p>Allow Enrollment of Undocumented Immigrants in Non-Qualified Health Plan (QHP)</p>	<p>Allow undocumented individuals to enroll in a non-QHP product through Covered California.</p>	<p>Coverage: No initial concerns identified relative to coverage guardrail. Impact on enrollment must be estimated to develop required analysis.</p> <p>Affordability: Unlikely to change affordability as undocumented individuals can currently purchase unsubsidized plans off of the Exchange, which can be mirror plans.</p> <p>Comprehensiveness: If the plans offered to undocumented immigrants are mirrors of current QHP’s offered on the Exchange, the comprehensiveness of the benefits would not be affected.</p> <p>Deficit Neutrality: Concern has been raised that this proposal could lead to increased enrollment of currently-eligible family members which could be argued to be an increase in the federal deficit. However, these consumers are currently eligible for APTC/CSR and have not yet taken advantage of signing up for coverage through the Exchange.</p> <p>Administration: Covered California could implement changes to plan contracting and the enrollment system given needed lead time.</p>	<ul style="list-style-type: none"> • Will require significant time in the coming months to develop into a targeted waiver proposal for 2016. • Likelihood of federal approval unclear since coverage of undocumented individuals through state marketplaces was specifically precluded under the Affordable Care Act. • Implementation would require potentially significant changes in CalHEERS plan selection functionality. • Health plan contracting mechanism will need to be developed for non-QHPs. • Implementation would need to include significant revisions to marketing campaign to explain potentially-confusing differences in subsidies for mixed immigration status families. • Given the CalHEERS, plan contracting and marketing issues for Covered California, the soonest such a program could likely be fully implemented would be 2018 – subject to prompt review and action by the federal government.

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		State Budget Neutrality: No initial concerns identified.	
Fix the “Family Glitch”	Allow dependents and spouses to receive APTC if dependent coverage through employer-sponsored plan is unaffordable.	<p>Coverage: No initial concerns identified relative to coverage guardrail.</p> <p>Affordability: No initial concerns identified relative to affordability guardrail.</p> <p>Comprehensiveness: No initial concerns identified relative to comprehensiveness guardrail.</p> <p>Deficit Neutrality: Because individuals in the family glitch are not currently eligible for a subsidy, fixing the family glitch will increase the number of subsidy-eligible enrollees and potential federal expenditures for APTC.</p> <p>Administration: Would need to implement changes to the enrollment system.</p> <p>State Budget Neutrality: No state funding mechanism identified assuming unavailability of federal funding.</p>	<ul style="list-style-type: none"> • Near-term likelihood of federal approval highly unlikely.
Offer Adult Vision and Dental as an Ancillary Benefit	Offer non-QHP stand-alone adult vision and dental plans through the Exchange.	<p>Coverage: No initial concerns identified relative to coverage guardrail.</p> <p>Affordability: No initial concerns identified relative to affordability guardrail. Purchase of these plans would be voluntary and benefits would not be considered EHBs.</p> <p>Comprehensiveness: This option would not affect the comprehensiveness of coverage as these additional benefits would not be EHBs.</p>	<ul style="list-style-type: none"> • Market analysis needed on product offerings and whether to offer ancillary products through individual and/or small business Exchange prior to developing a waiver proposal.

		<p>Deficit Neutrality: No initial concerns relative to deficit neutrality if APTC is not available for these plans.</p> <p>Administration: Would require development of benefit designs, contracting mechanisms, plan display functionality and other operational processes.</p> <p>State Budget Neutrality: No initial concerns identified.</p>	
<p>Offer Adult Vision and Dental as Essential Health Benefits</p>	<p>Offer vision and dental benefits as Essential Health Benefits.</p>	<p>Coverage: No initial concerns identified relative to coverage guardrail.</p> <p>Affordability: Additional analysis needed on impact to premiums and out-of-pocket costs.</p> <p>Comprehensiveness: No initial concerns identified relative to comprehensiveness guardrail.</p> <p>Deficit Neutrality: Additional analysis needed on the impact to the federal deficit due to potential premium increases.</p> <p>Administration: Would require state changes to EHBs.</p> <p>State Budget Neutrality: Additional analysis needed on potential impacts to state budget.</p>	<ul style="list-style-type: none"> • Significant analysis needed on viability of proposed waiver mechanism for expanding the definition of EHBs.
<p>Offer Medi-Cal Plans in Covered California</p>	<p>Allow Medi-Cal plans to be offered on the Exchange and waive certain requirements for those plans such as requirement to</p>	<p>Coverage: No initial concerns identified relative to coverage guardrail.</p> <p>Affordability: Additional analysis needed on the impact to affordability if Medi-Cal plans are included in the calculation of the second</p>	<ul style="list-style-type: none"> • Further analysis needed to understand impacts of state and federal law and whether a waiver would be permitted to allow plans to offer only in the Exchange.

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	<p>participate in the off-Exchange individual market.</p>	<p>lowest cost silver plan upon which APTC is based. Comprehensiveness: No initial concerns identified relative to comprehensiveness guardrail. Deficit Neutrality: Additional analysis needed on the impact to the federal deficit if Medi-Cal plans are included in the calculation of the second lowest cost silver plan upon which APTC is based. Administration: Would need to explore health plan contracting and operational issues. State Budget Neutrality: No initial concerns identified.</p>	
<p>Offer “Copper” Plans for Consumers with Income above 400 Percent of the Federal Poverty Level</p>	<p>Offer copper plans with a 50 percent actuarial value and a required Health Savings Account.</p>	<p>Coverage: No initial concerns identified relative to coverage guardrail. Affordability: Analysis needed as copper plans would have lower premiums but higher out-of-pocket expenses than other metal tiers. Comprehensiveness: Additional analysis needed depending on proposed scope of benefits for copper plan. Waiver of the minimum 60 percent actuarial value requirement would be necessary. Deficit Neutrality: Appears this proposal would not affect the federal deficit because individuals eligible to purchase a copper plan would not be eligible for APTC.</p>	<ul style="list-style-type: none"> • Significant development needed for this proposal. • Likelihood of federal government waiving 60 percent actuarial value requirement unclear.

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		<p>Administration: Would require development of benefit design, contracting mechanism (assuming the copper plan would be considered a non-QHP), plan display functionality and other operational processes.</p> <p>State Budget Neutrality: No initial concerns identified.</p>	
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