State Waivers: How a State Could Do Health Reform Its Own Way

Authored by U.S. Senator Ron Wyden, Section 1332 of the Patient Protection and Affordable Care Act - the “Waiver for State Innovation” – will allow states to waive out of some of the requirements of federal health reform if they meet certain standards.

Here’s how it would work:

Step 1: The state passes a law to provide health insurance to its citizens.

Step 2: The Secretary of Health and Human Services and the Secretary of the Treasury review the law, and determine that the plan meets the following tests:

a) The state waiver ensures that individuals get insurance coverage that is at least as comprehensive as provided under federal law;

b) The state waiver ensures that individuals get insurance coverage that is as affordable (i.e. cost-sharing and protections against out-of-pocket spending) as it would otherwise be under federal law;

c) The state waiver ensures that as many people are covered as under the federal plan; and

d) The state waiver will not increase the Federal deficit.

Step 3: Starting in 2017, if the Secretaries of Health and Human Services and Treasury find that the state’s law can meet the above requirements without certain federal requirements, states can get a waiver from having to comply with those federal requirements. Depending on the specifics, the state plan could waive out of the following aspects of federal health reform:

- **The individual mandate.**
- The employer penalty for not providing coverage.
- The exact standards for a basic health insurance policy.
- The health insurance exchange.
- The design for how federal subsidies would have to reduce premiums and copays for people
- A state could then collect all of the federal money – the subsidies for premiums, the subsidies for co-pays, and the tax credits for small businesses – in total, and put the money into financing coverage for individuals in its own way.

- The Section 1332 waiver doesn’t affect other requirements of the health reform law. However, 1332 includes a coordinated waiver process that allows other programs that allow state waivers (e.g. Medicaid) to be waived through this coordinated process.

What Does the Empowering States to Innovate Act Do?

1) It moves the date the waiver for state innovation can become effective from 2017 to 2014. This ensures that a state does not have to comply first with the full design of the Affordable Care Act before being able to set up its own approach. Requiring a state to effectively design two different health reform systems is overly burdensome, and would likely result in wasted resources.

2) It requires that the Secretary start receiving state waiver applications within 6 months of enactment of this stand-alone legislation. That will give states the leeway they need to know they have approval to implement their unique waiver prior to 2014, when the waiver will go into effect.