State Health Care Reform: Waivers, Single-Payer, and the Need for Alternative Pathways

James Maroulis, JD, MAS, and Tim Ken Mackey, MAS, PhD

The U.S. health care system is in transition. Politicians, interest groups, and constituents disagree about how to change coverage, reduce costs, regulate health care markets, and navigate the future of health care reform after the Patient Protection and Affordable Care Act (ACA). Meanwhile, the number of uninsured adults has increased by 7 million since late 2016, and this number does not include the millions of Americans who remain underinsured (1).

States have the power to regulate health insurance, medical benefits, providers, and other aspects of health care delivery, and they have started exploring reform measures to fill coverage gaps. However, these efforts face several federal barriers, some of which can be waived by the federal government and some of which cannot.

Health Care Waivers

The Section 1332 Waiver of the ACA, which is also known as the State Innovation Waiver, went into effect in January 2017. It allows the U.S. Department of Health and Human Services (HHS) to waive certain ACA structural requirements while continuing federal funding to states, provided the reform is deficit neutral and provides coverage and cost-sharing benefits that remain the same or increase in value (2).

Although some supporters of Section 1332 believed it would facilitate single-payer reform (3), the statutory language is brief and contains several criteria that give HHS considerable discretion to interpret the law and approve applications. Realizing this, in 2018 the Trump administration issued regulatory guidance that encouraged private market reforms and diminished guidance about coverage requirements from the Obama era (2).

Other waivers exist. For example, some Medicare regulations can be set aside by a Section 402/222 Waiver, which must be evaluated by HHS and be budget neutral (4). These waivers allow for the testing of innovations that might improve access and quality or lower health care costs (4). Typical approved waivers allow new benefits, change payment methods, and introduce provider risk sharing and other initiatives that improve care coordination (4).

The principal Medicaid waiver is known as Section 1115, which permits states to experiment with reforms that test and evaluate innovative projects (5). Under the Trump administration, these projects have focused on conservative goals, such as tying Medicaid eligibility to work requirements (5). However, the courts have vacated some approvals of Section 1115 projects with work requirements because the waivers lacked justification on how they would comply with Medicaid's statutory responsibility to promote health care coverage (6).

In addition, millions of workers receive coverage through self-insured and fully insured private plans that are regulated by the Employee Retirement Income Security Act of 1974 (ERISA). This act is a substantial legal obstacle to many reforms because it preempts states from modifying health care coverage benefits in their plans, and there are no waivers (7). Therefore, even if states could obtain waivers from federal programs for innovative reforms, it is uncertain how they might arrange similar changes for self-insured and fully insured private plans, which provide most employer-based insurance coverage.

Barriers to Single-Payer State Plans

A single-payer state plan, in its purist form, would include all of a state's residents, whether publicly or privately insured, in a single government program. Such a plan would require waivers from ACA, Medicaid, and Medicare. When weighing the history of waivers, the statutory language, and the regulatory guidance for these programs, we believe that Medicare's Section 402/222 Waiver would be the most restrictive and would likely require an act of Congress to accommodate single-payer initiatives. In addition, no precedent exists for granting waivers to allow Medicaid or the ACA's individual and small business exchanges to join a larger government program (2, 8). The closest precedent occurred in Hawaii, where the state was granted authority to redirect federal funds from an ACA small business exchange to a state program that assists employer-based insurance (9).

However, even if these waivers could be obtained, the state would still have to solve the ERISA problem. Hawaii is the only state that has received an exemption from some of ERISA's requirements, and that exemption required an amendment to the ERISA statute for a health insurance program that predated it (7). Alternatively, the state could offer employers the option of paying into the single-payer system instead of providing health benefits directly (7). It is unclear, however, whether this option would violate ERISA's requirements.

The Future of Coverage Expansion

Given the many political, legal, and regulatory challenges faced by a single-payer system, we think that states should consider more practical, near-term approaches that could achieve similar policy goals. These approaches would combine waivers with other such changes as Medicaid buy-in to extend coverage expan-

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sion. Medicaid buy-in would allow state residents who are normally ineligible for Medicaid to purchase it. This approach is attractive because many characteristics of Medicaid buy-in are more compatible with existing programs: They would keep ACA health insurance exchanges and Medicaid plans and likely would have no effect on Medicare or ERISA plans. Medicaid buy-in would likely require waivers of both Section 1332 and Section 1115 (7, 10). Approximately a dozen states are exploring this approach (10).

State policymakers should also continue to review approved waivers because they can serve as guidelines for future reform. For example, several Section 1115 waivers have expanded benefits and eligibility for vulnerable populations (8). There are fewer Section 1332 waivers, but they could indicate how HHS might interpret future requests. In addition, state policymakers should recognize that they can forgo federal funding to pursue coverage expansion, if they can afford to.

We expect that U.S. health care will continue to evolve to provide broader insurance coverage, and we believe that the states are in a position to lead. Moreover, we believe that waivers are a critical tool for states to use for implementing these innovations.

From University of California San Diego, San Diego, California (J.M.); and Global Health Policy Institute and University of California, San Diego School of Medicine, San Diego, California (T.K.M.).

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Corresponding Author: Tim Ken Mackey, MAS, PhD, Global Health Policy Institute, 8950 Villa La Jolla Drive, Suite A124, San Diego, CA 92037; e-mail, tmackey@ucsd.edu.

Current author addresses and author contributions are available at Annals.org.

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Current Author Addresses: Mr. Maroulis and Dr. Mackey: 8950 Villa La Jolla Drive, Suite A124, La Jolla, CA 92037.

Author Contributions: Conception and design: J. Maroulis, T.K. Mackey.
Analysis and interpretation of the data: J. Maroulis, T.K. Mackey.
Drafting of the article: J. Maroulis, T.K. Mackey.
Critical revision of the article for important intellectual content: J. Maroulis, T.K. Mackey.
Final approval of the article: J. Maroulis, T.K. Mackey.
Administrative, technical, or logistic support: J. Maroulis, T.K. Mackey.
Collection and assembly of data: J. Maroulis, T.K. Mackey.