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Waiver World: A Guided Tour of 1115 and 1332 Waivers

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Waiver World

A Guided Tour of 1115 and 1332 Waivers

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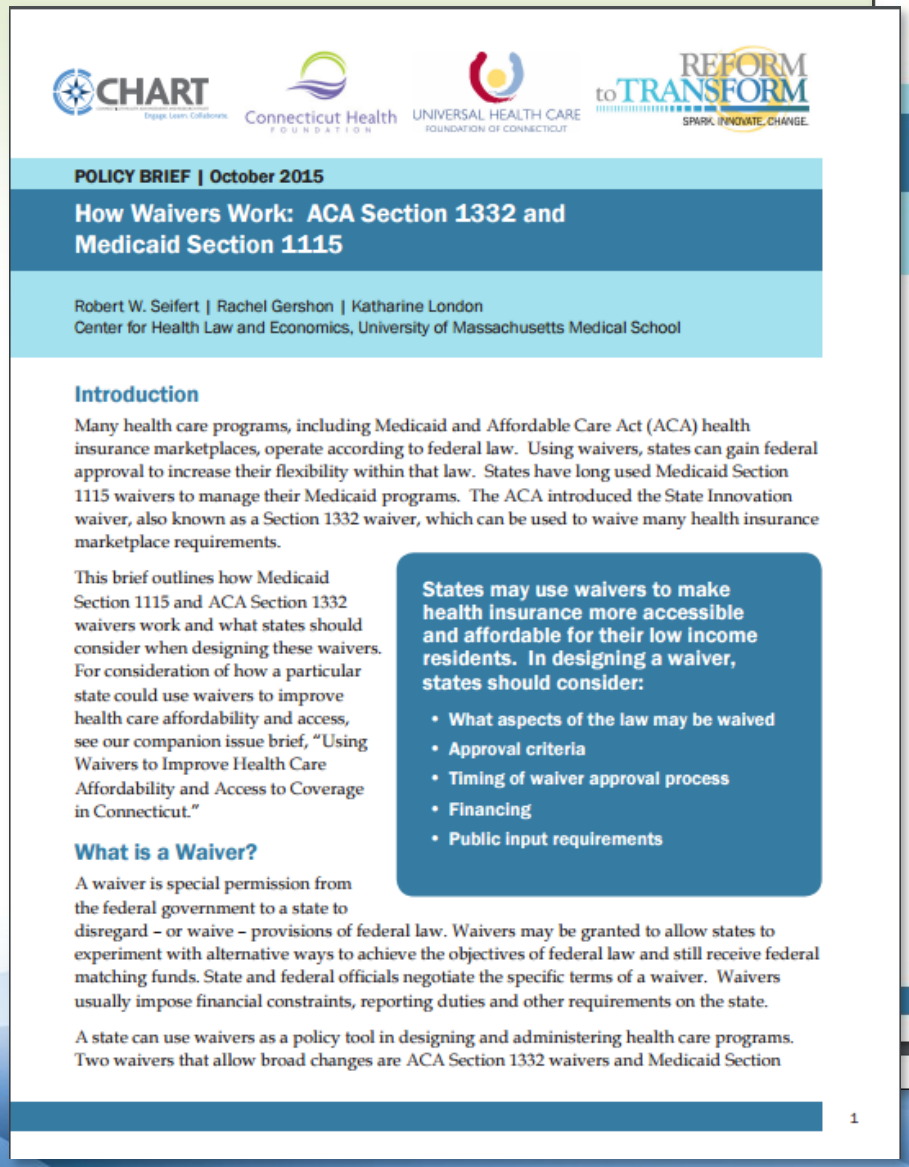
Overview

I. Foundation and Context

II. Section 1115 of the Social Security Act

III. Section 1332 of the Affordable Care Act

IV. Discussion



POLICY BRIEF | October 2015

How Waivers Work: ACA Section 1332 and Medicaid Section 1115

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Introduction

Many health care programs, including Medicaid and Affordable Care Act (ACA) health insurance marketplaces, operate according to federal law. Using waivers, states can gain federal approval to increase their flexibility within that law. States have long used Medicaid Section 1115 waivers to manage their Medicaid programs. The ACA introduced the State Innovation waiver, also known as a Section 1332 waiver, which can be used to waive many health insurance marketplace requirements.

This brief outlines how Medicaid Section 1115 and ACA Section 1332 waivers work and what states should consider when designing these waivers. For consideration of how a particular state could use waivers to improve health care affordability and access, see our companion issue brief, "Using Waivers to Improve Health Care Affordability and Access to Coverage in Connecticut."

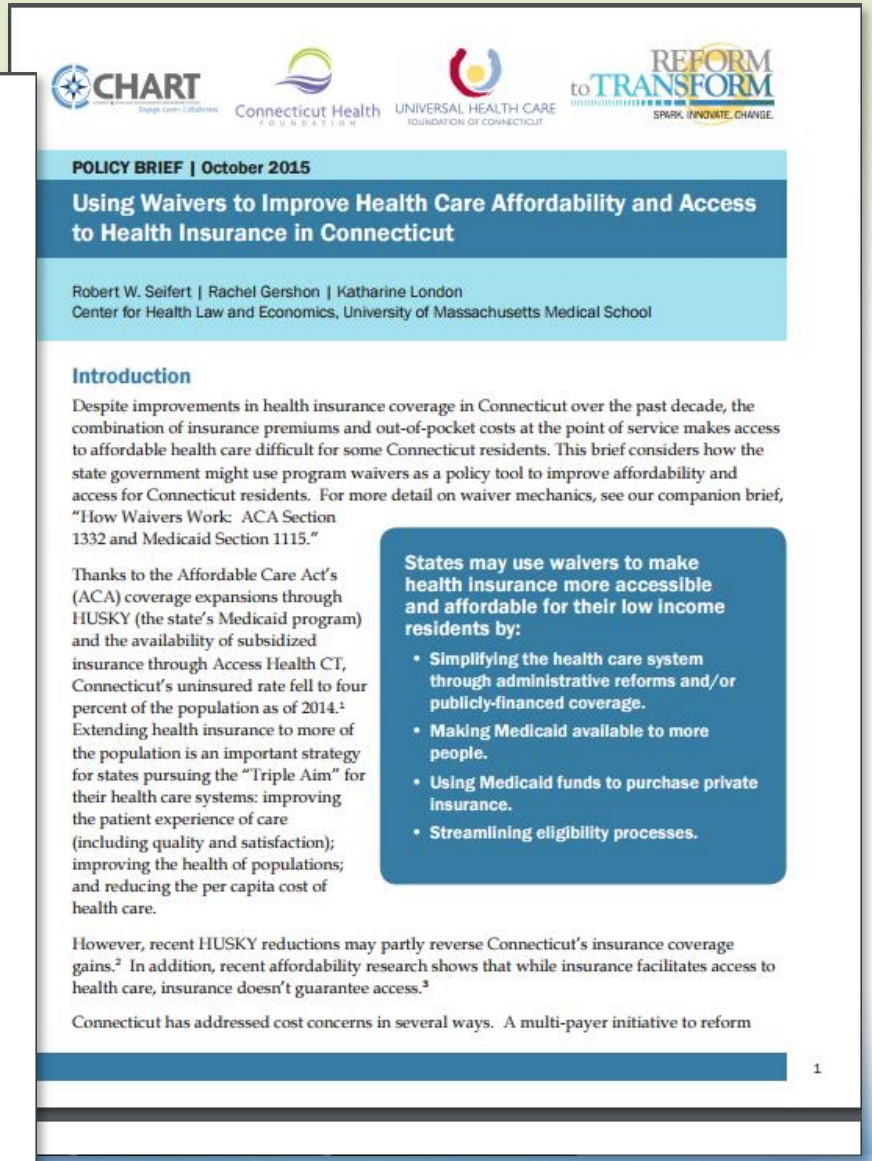
States may use waivers to make health insurance more accessible and affordable for their low income residents. In designing a waiver, states should consider:

- What aspects of the law may be waived
- Approval criteria
- Timing of waiver approval process
- Financing
- Public input requirements

What is a Waiver?

A waiver is special permission from the federal government to a state to disregard – or waive – provisions of federal law. Waivers may be granted to allow states to experiment with alternative ways to achieve the objectives of federal law and still receive federal matching funds. State and federal officials negotiate the specific terms of a waiver. Waivers usually impose financial constraints, reporting duties and other requirements on the state.

A state can use waivers as a policy tool in designing and administering health care programs. Two waivers that allow broad changes are ACA Section 1332 waivers and Medicaid Section



POLICY BRIEF | October 2015

Using Waivers to Improve Health Care Affordability and Access to Health Insurance in Connecticut

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Introduction

Despite improvements in health insurance coverage in Connecticut over the past decade, the combination of insurance premiums and out-of-pocket costs at the point of service makes access to affordable health care difficult for some Connecticut residents. This brief considers how the state government might use program waivers as a policy tool to improve affordability and access for Connecticut residents. For more detail on waiver mechanics, see our companion brief, "How Waivers Work: ACA Section 1332 and Medicaid Section 1115."

Thanks to the Affordable Care Act's (ACA) coverage expansions through HUSKY (the state's Medicaid program) and the availability of subsidized insurance through Access Health CT, Connecticut's uninsured rate fell to four percent of the population as of 2014.[1] Extending health insurance to more of the population is an important strategy for states pursuing the "Triple Aim" for their health care systems: improving the patient experience of care (including quality and satisfaction); improving the health of populations; and reducing the per capita cost of health care.

States may use waivers to make health insurance more accessible and affordable for their low income residents by:

- Simplifying the health care system through administrative reforms and/or publicly-financed coverage.
- Making Medicaid available to more people.
- Using Medicaid funds to purchase private insurance.
- Streamlining eligibility processes.

However, recent HUSKY reductions may partly reverse Connecticut's insurance coverage gains.[2] In addition, recent affordability research shows that while insurance facilitates access to health care, insurance doesn't guarantee access.[3]

Connecticut has addressed cost concerns in several ways. A multi-payer initiative to reform

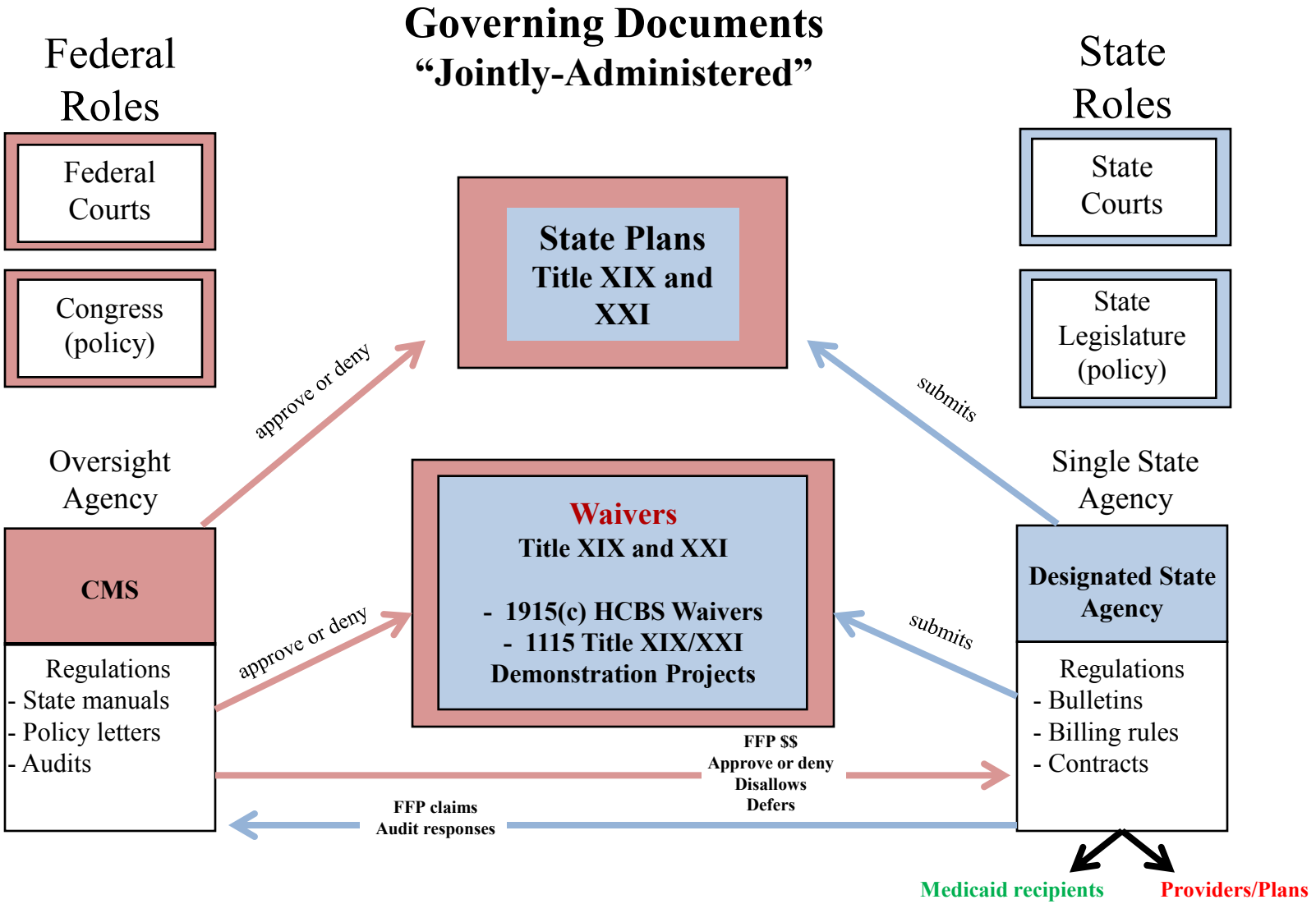
I. Foundation and Context

Why Focus on 1115 and 1332 Waivers?

- Breadth and potential to re-shape health care programs to meet State (and Federal) objectives
- Capture federal funds for new state-initiated **ideas**
- **Section 1115** – A Demonstration project is approved if *"…*in the judgment of the Secretary, it is ***likely to assist in promoting the statutory objectives of the Medicaid*** *or CHIP* ***program***." 42 CFR 431.404; See also, Section 1115(a) of the SSA
- **Section 1332** - Insurance and exchange regulation under ACA may not align with your state client policy goals; Section 1332 option may help

II. Section 1115 of the Social Security Act

Medicaid Legal Framework
States "elect" to participate



“Traditional” Examples of Section 1115 Opportunities

Statewide-ness – Section 1902(a)(1): To enable the State to operate the Demonstration on a less-than-statewide basis.

Amount, Duration and Scope of Services – Section 1902(a)(10)(B): To enable the State to provide benefit packages to Demonstration populations that differ from the State plan benefit package.

Eligibility Expansion – via financial eligibility streamlining; or establishing higher income standards; or limiting asset “tests.”

Newer Section 1115 Opportunities

- **Delivery System Reform**
  - Delivery System Transformation Initiative (DSTI)
  - Delivery System Reform Incentive Payments (DSRIP)
  - Designated State Health Programs (DSHP)
- **Financing mechanisms**
  - Re-deploying some or all of the State's Disproportionate Share Hospital (DSH) allotment
  - Expenditure authority for existing state costs; aka, CNOM
  - Provider taxes, savings (utilization mngmt, APMs)
  - Medicare/Medicaid ("Dual") blended payment methods

Is a Section 1115 Waiver the Best Solution?

Weighing the options …

Expanded State Plan options; *e.g.*,

- ACA Adult coverage to 138% FPL
- HCBS options – 1915(c),(i),(j),(k)
- Managed Care plans

But…what if SP option parameters are at odds with your State's idea?

Demonstration waiver needed:

- *Income standard higher than 138%*
- *Budget constraints require HCBS caseload limits*
- *Targeted case management via selective contracting*
- *Beneficiary cost sharing - variations*
- *Provider incentive payments and "CNOM"*

Design Development and Analysis

Within External Parameters? *e.g.,*

- No less generous benefits for mandatory populations;
- Voluntary for Medicare beneficiaries; plan choices
- Independence of health plan enrollment processes;
- Legislature's and consumers' policy tolerance

Administrative Feasibility? *e.g.,*

- Can existing eligibility and MMIS systems accommodate changes? Increases in staff levels or vendor costs?
- Can provider groups participate without daunting adjustments?

Projecting service volume, caseload, pricing impacts

- Does Agency have sufficient market influence; other tools?

Basic Elements of Section 1115 Applications

- Share a Concept Paper with HHS/CMS
- Show that your "idea", your proposal, promotes goals of Medicaid: *access, cost efficiency, quality outcomes*
- Engage with stakeholders and the general public
- Develop a detailed program description with all needed waiver and expenditure authorities identified
- Negotiate CMS approval, which includes:
  - Special Terms and Conditions (STCs) for waivers and spending
  - Protocol Document – how to operate/implement the program
  - Ensure Budget Neutrality

Section 1115 Waiver: Launched

- Does the federally - approved Demonstration program or STCs or other conditions require further state level legislation?
- Plan time to secure policy leaders' endorsement of the final Demonstration project features, as needed
- Establish an ongoing Stakeholder Communications Plan
- Implementation planning and resource gathering
- Sustainability: Waiver Extension => Reform mainstreamed
  - Renewals and Amendments
  - Sustaining financing and federal support

We want to hear from you…

III. Section 1332 of the Affordable Care Act

Section 1332 Focus: Individual and Small Group Markets

Before 2010:
Few consumer protections; Many states tried reform to varying effect

2010 – 2014 and beyond:
Implementation of ACA reforms

Section 1332: Opportunities

Flexibility to waive requirements of certain federal laws

- Establishment of Exchanges and Qualified Health Plans
- Premium Tax Credits*
- Cost-Sharing Subsidies*
- Individual Mandate
- Employer Mandate
- Small Business Credits*

* Availability of pass-through funds to the state

Section 1332: Limitations

Does not include explicit authority to waive

- Nondiscrimination (ACA s. 1557)
- Medicaid and Medicare provisions
- Market protections (guaranteed issue, etc.)
- Some Exchange operation requirements
- Others

Calculating Pass-through

- Amount that would have been paid in federal financial assistance
- Does not include administrative costs
- Determined by the HHS and Treasury Secretaries

Section 1332 Waiver: Process

- State develops waiver proposal, with input from public (including a public comment period)
- State submits waiver to HHS (and, if there are pass-through funds involved, Department of Treasury)
- State negotiates with HHS and Treasury
- HHS and Treasury approve or deny waiver

Group Exercise

State Experience

- California
- Hawai'i
- Vermont

Section 1332: Requirements

- State authorizing legislation required
- States must show that the resulting system will **not increase the federal deficit** and…
  - Be at least as **comprehensive** as…
  - Be at least as **affordable** as…and
  - Cover **as many people** as…

    …would have happened absent the waiver

Section 1332: Requirements

When considering comprehensiveness, affordability, and scope of coverage:

- Consider impact on all residents of the state, regardless of coverage type
- Forecast for each year
- Vulnerable subsets of the population considered
- Only consider changes already in place
- Include actuarial analysis and certification, economic analyses, data, and assumptions

Guardrail: Comprehensiveness

Coverage that is **at least as comprehensive** for the state's residents

Comparing to EHB benchmark and Medicaid/CHIP standard

Guardrail: Affordability

Coverage and cost-sharing protections against excessive out-of-pocket spending that are **at least as affordable**

Looking at out-of-pocket expenses and covered services, relative to income

Guardrail: Number of People Covered

Provide coverage to **at least a comparable number** of the state's residents

Includes gaps in coverage and discontinuation of coverage

Guardrail: Federal Deficit Neutrality

Projected Federal spending net federal revenues must be equal to or lower than those absent waiver

Spending	Revenues
• Federal financial assistance; • Medicaid spending; • Administrative costs	• Income, payroll, excise tax; • User fees
Additional items may be considered on both the spending and revenue side.	

Relationship to Other Waivers

- **A state can submit a single application for 1332 and other waivers (including 1115)**

BUT

- **Waivers will be evaluated separately**
  - Savings earned under one waiver cannot be applied to the other
  - Changes made to Medicaid cannot be applied until approved

Operational Considerations

- **Federally-facilitated Exchanges will have limited ability to implement waiver changes**

  e.g., Different enrollment periods

- **The IRS will also have limited ability to implement waiver changes**

  e.g., Changes to eligibility for premium tax credits

Resources

How Waivers Work: ACA Section 1332 and Medicaid Section 1115
http://www.cthealth.org/publication/how-waivers-work/

Using Waivers to Improve Health Care Affordability and Access in Connecticut
http://www.cthealth.org/publication/waivers-affordability-access/

Thank you!

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http://commed.umassmed.edu/centers-programs/center-health-law-and-economics