On Oct. 22, the federal government issued new draft regulations concerning 1332 waivers. In a call to CSG from the Centers for Medicare and Medicaid Services (CMS), officials explained the new regulations would provide more flexibility to states, revising the "guardrails" set in the 2012 regulations. Plans previously considered non-ACA compliant could be sold on the marketplaces and could qualify for federal subsidies.

There will be a 60 day comment period on the regulations. They said the U.S. Department of Health and Human Services would soon release examples of how states can take advantage of the new flexibility. They also said they expected to host conference calls and webinars on the proposed regulations. The new policies could be in effect as early as 2020.

Here are some of the key changes:

- Waivers could allow the expanded use of non-ACA compliant plans, including exclusion of pre-existing conditions, as long as one option sold on the marketplace is ACA-compliant.
- The definition of what counts as insurance coverage is expanded to include persons on short-term, limited duration plans. Under previous changes, these plans can run for one year and be renewed for three years. The Obama administration had limited them to 90 days.
- Subsidies could be used to buy non-ACA compliant plans. Currently federal subsidies can only be used for purchase of ACA-compliant plans purchased through the marketplaces.
- A waiver could be submitted by a state after some combination of existing legislation and executive orders, helping states with biennial sessions.

"It's hard to overstate how much flexibility states will have under the Trump administration's new guidance for ACA waivers," Mike Leavitt, former Utah governor and former DHHS secretary under President George W. Bush, told Business Insider. He continued, "This will likely widen the gap between red states and blue states for access, affordability, regulation, and protections for pre-existing conditions."

Seema Verma, administrator of CMS, took on potential critics directly, telling Kaiser Health News this approach will allow states "to provide consumers plan options that best meet their needs, while at the same time ensuring that those with preexisting conditions retain access to the same coverage as today."

The waivers, originally called Waivers for State Innovation, have been renamed State Relief and Empowerment Waivers.

A fact sheet is available from CMS with more information. This notification contains the links to the old regulations and older fact sheets. The notification also includes links to the eight 1332 waivers that have already been approved. Here is a link to the Kaiser Family Foundation 1332 waiver tracking website and a 2017 Kaiser report on state innovation waivers.


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