



## 2017 FORECAST

**THERESA LAPERA, BA**  
tlapera@healthmanagement.com  
Principal  
Austin, TX

# HEALTH MANAGEMENT ASSOCIATES

## The Future of Waivers

### THE BACKGROUND

Section 1115 waivers have long been a part of the Medicaid landscape, especially since the 1990s when waivers emerged as a state-by-state reform tool when national legislation was proposed, but not enacted, during the first Clinton administration. Over time, Congress passed laws that eliminated the need to waive certain provisions (e.g., mandatory managed care as part of the Balanced Budget Act and non-disabled childless adult eligibility as part of the Affordable Care Act). Nonetheless, states have continued to operate and request new section 1115 waivers in order to advance individual policy goals. Some have opined that with talk of block grants and an ACA repeal, waivers may no longer be necessary.

### PREDICTIONS:

#### **Waivers are not going away, at least in the short term.**

Even if there is an immediate repeal of the ACA, states will still need and want waivers. A repeal, which is likely to be accompanied by some sort of a timeframe for replacement, will not change the program overnight. And any planned changes to the underlying Medicaid program – such as replacement with a block grant – will take months or even years to iron out. All of this means that come 2017, states may very likely be operating in exactly the same statutory context as today, and the same evolving set of policy goals that have driven waiver proposals for the past decades will continue to motivate states to seek waivers.

#### **States are likely to request – and receive – unprecedented flexibility in their waivers.**

One signal that is clear is that the new Administration will be more favorably disposed to approve waivers that emphasize personal responsibility. Proposals that have not been favorably received, such as stricter work requirements tied to Medicaid, may be revisited. There may also be more flexibility with regard to benefit restrictions. The federal government will still be bound by many of the statutory constructs of section 1115, which deem that certain aspects of Medicaid cannot be waived, such as the federal matching rate, receiving federal funds for care related to nonqualified aliens, and certain limits on cost sharing. In addition, previous administrations have received and abided by legal opinions that durational residency requirements are not permissible.

#### **An ACA repeal could undermine the financial foundation of certain waivers.**

When the ACA was enacted, states that had childless adult expansions as part of their waiver were able to renegotiate their budget neutrality agreements on more favorable terms. Essentially, the cost of this population was counted on both the plus and minus side of the equation meaning that states were “held harmless.” Previously, states had to show offsetting savings. In a repeal scenario, it is likely that these agreements would need to be renegotiated to mirror the previous more restrictive requirements.

#### **On the other hand, action on the ACA could unleash a new set of section 1332 waiver proposals.**

Depending on the repeal/transition/replace pathway when Congress takes action in the New Year, it is plausible that section 1332 will remain in place. There have already been signals that Congress is open to considering ways to make the 1332 process less burdensome and even that there could be some way to integrate section 1332 authority with the section 1115 vehicle. Look for more, not less, action on 1332 as this provision, which was always set to take effect in 2017, is implemented.

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**There could be a new model waiver on the horizon.**

In the early 2000s, the Bush administration produced a new section 1115 waiver template called HIFA – or the Health Insurance Flexibility and Accountability initiative. The purpose of the initiative was to create a streamlined pathway for states to request waiver flexibility, provided that states were willing to stay within certain guardrails having to do mostly with benefits and eligibility. Similarly, a Trump administration could produce a similar initiative based on new policy goals. Incoming CMS Administrator Seema Verma, the architect of the Healthy Indiana Plan waiver and a consultant who has worked on other states' waiver proposals, is well versed in section 1115 and could certainly spearhead such an initiative.