THE BUCKEYE INSTITUTE

Public Comments
Ohio’s 1332 Medicaid Waiver Request

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The Affordable Care Act requires individuals to purchase health insurance coverage or pay a penalty for failing to do so. The recent federal tax reform legislation has reduced the penalty—or tax—for violating the "individual mandate" to $0, but the mandate itself remains in federal law and the penalty could be raised again someday.

On February 18, 2018, Ohio took advantage of another provision of the Affordable Care Act that allows states to apply for "innovation waivers." Section 1332 of the act permits states to request exemptions or waivers from certain aspects of the law provided that states meet the following four criteria:

- Coverage must be at least as comprehensive as would be provided without the waiver;
- Coverage must be provided to a comparable number of state residents as would be provided without the waiver;
- Coverage and cost sharing provisions must be at least as affordable as they would be without the waiver; and
- The waiver must not increase the federal deficit.[1]

Rigid policy guidance issued by the Obama Administration in 2015, however, discouraged states from pursuing innovation waivers.[2] The Trump Administration has not yet revised the earlier guidance, but it has granted several waiver requests and encouraged states to think strategically about health insurance markets, promising some new flexibility with respect to Section 1332 waiver requests.[3]

Ohio's February waiver request takes a measured step by seeking a five-year exemption from the Affordable Care Act's individual mandate. The Buckeye Institute commends policymakers for this most recent waiver application, but encourages the state to take greater advantage of the innovation waiver process and pursue bolder reforms on behalf of citizens and businesses alike.

The proposed waiver exempting Ohioans from the individual mandate satisfies the four waiver requirements under Section 1332 and, if approved, it will help stabilize the state's insurance market. Oliver Wyman's actuarial analysis of the proposed waiver on Ohio's insurance market concurs with the Congressional Budget Office's (CBO) assessment estimating no change in insurance coverage, affordability, or the federal deficit. As the CBO has explained, there is no substantive difference between eliminating the mandate and eliminating the mandate's penalty.[4]

Therefore, because federal law reduces the penalty for violating the individual mandate to $0 in 2019, Ohio's proposed innovation waiver exempting the state from the mandate itself will not have an adverse effect on Ohio's insurance market—indeed, an approved waiver will not affect the insurance market at all. Thus, Ohio's waiver request merely clarifies in law what is already clear in the marketplace, which will have a stabilizing effect on the insurance market.

[1] **42 U.S.C. 18052 § 1332 (2010)**.
[2] Rea S. Hederman Jr. and Dennis G. Smith, ***Recommendations for Freeing State Health Care Through 1332 Waivers***, The Buckeye Institute, July 29, 2016.
[3] **Letter to State Governors** from Secretary Thomas E. Price, U.S. Department of Health and Human Services, March 13, 2017.
[4] Congressional Budget Office, ***Repealing the Individual Health Insurance Mandate: An Updated Estimate***, November 2017.

Bolder Steps, Bigger Strides

State innovation waivers give states flexibility in managing their health care and health insurance markets. With the Trump Administration's stated openness to Section 1332 waiver applications, more states have pursued waivers for relief from the damage that the Affordable Care Act has done to their health care markets. Alaska, for example, successfully used a reinsurance waiver to reduce its individual health insurance premiums by more than 20 percent.[5] Oklahoma and Iowa have also proposed broad waivers to help make insurance more affordable in their individual insurance markets.[6]

Beyond seeking a formal exemption from the now-toothless individual mandate, Ohio should use the Section 1332 process aggressively to explore new alternatives to the status quo. Policymakers could, for instance, request a waiver from the Affordable Care Act's employer mandate. Combining such a waiver with a reinsurance waiver like Alaska's could help the individual market while alleviating a significant burden for small businesses. Ohio should use the waiver process boldly and creatively to lower individual insurance premiums and stabilize the state's insurance market.

The Buckeye Institute applauds Ohio's recent waiver request, but we encourage policymakers to take bigger, bolder strides, and to blaze a trail of innovative health insurance reforms that the rest of the country can follow.

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[5] Timothy Jost, **Insurer Participation Down, Premiums Up in Uncertainty-Plagued Marketplaces**, *Health Affairs*, October 30, 2017.

[6] Doug Badger and Rea S. Hederman Jr., ***Federal Efforts to Stabilize ACA Individual Markets through State Innovation***, the Mercatus Center at George Mason University, February 27, 2018.

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