California Health Care Foundation

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Executive Summary

Understanding the Rules:

Federal Legal Considerations for State-Based Approaches to Expand Coverage in California

Since the implementation of the Affordable Care Act (ACA) in 2014, the uninsured rate in California has dropped to a historic low. However, 2.9 million Californians remained uninsured, and plan choice and affordability remain concerns for many people with coverage.

There are myriad ways California might seek to expand coverage as well as address other issues such as consumer choice and health care affordability. This paper identifies four approaches designed to expand coverage that have been under discussion among California state policymakers and stakeholders: (1) a single-payer system, (2) improved marketplace affordability, (3) Medi-Cal expansion to undocumented adults, and (4) a public option. These approaches interact, to varying degrees, with federal programs and federal laws. This paper explores those interactions to illuminate legal issues that the state and stakeholders would need to consider under each of the approaches.

Table 1 summarizes the four state coverage policy approaches and the federal authorities implicated under each (see page 2). It is important to note that granting waivers is at the discretion of an administration.

The proposals described here vary in terms of their dependence on federal action. Not surprisingly, a single-payer system, which has sweeping ambitions with respect to altering the current financing and coverage arrangements, would need to navigate numerous federal legal constraints. Regardless of the path California chooses, a clear understanding of the role of federal laws and regulations, the constraints federal requirements impose on state-based solutions, the routes to gain federal approval, and precedents for states doing so, are important to understand as California considers its options.

Table 1. Comparison and Summary of Policy Approaches

	POLICY GOALS	KEY FEDERAL AUTHORITIES INVOKED	POTENTIAL PATHWAYS TO FEDERAL APPROVAL Granting waiver approval is at the discretion of an administration.
1. Single-payer system. Create a state-run single-payer health care coverage and health care cost-control system that would provide comprehensive coverage to those who are currently insured, as well as those who are uninsured, by merging Medicare, Medi-Cal, and marketplace funding, and potentially employer health care contributions as well.	➤ Expand coverage to all state residents. ➤ Maximize state purchasing power. ➤ Reduce system administrative costs.	➤ Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act ➤ Title I of the Affordable Care Act ➤ The Employee Retirement Income Security Act of 1974 (ERISA)	➤ California could operate Medicaid in the background of Healthy California to avoid seeking any Medicaid waivers, provided California follows all federal Medicaid requirements. A Medicaid Section 1115 waiver would be necessary if California did not wish to determine eligibility and/or track expenditures on a person-by-person basis. Additional waivers could be required if budgetary pressures lead to a reduction in benefits or an increase in cost sharing for beneficiaries. ➤ Center for Medicare & Medicaid Innovation (CMMI) and/or Medicare 402(b) waivers would be necessary to transfer Medicare trust fund dollars to the state or to mandate and administer enrollment into Medicare. ➤ An Affordable Care Act Title I 1332 waiver would be necessary for repurposing tax credit funding to pay for coverage that would meet existing marketplace benefit requirements. ➤ Since the Employee Retirement Income Security Act of 1974 (ERISA) preempts certain state laws for employee benefit plans, California would encounter barriers to any requirement that employers contribute to Healthy California rather than to current plans. Because ERISA is not waivable, federal legislation would be required to address this challenge. ➤ As an alternative to a pure single-payer system, a pay-or-play option might be possible if California follows the guidelines in *Golden Gate Restaurant Ass'n v. City & County of San Francisco*, 546 F. 3d 639 (9th Cir. 2008), but it is likely to be challenged.
2. Improved marketplace affordability. Create a new program to subsidize premiums and/or cost sharing for coverage purchased through Covered California. The state could also create a reinsurance program designed to reduce premiums for individual market coverage.	➤ Make individual market coverage more affordable.	➤ No federal authority invoked unless federal funding sought.	➤ A Medicaid Section 1115 waiver would be needed if California seeks Medicaid funding to support marketplace affordability improvements. ➤ An Affordable Care Act Title I Section 1332 waiver would be needed if California were to seek federal tax credit funding. ➤ An Affordable Care Act Title I Section 1332 waiver would be needed if California were to seek federal funding for a state-run reinsurance program.
3. Medi-Cal expansion to undocumented adults. Allow Californian adults not eligible for Medi-Cal because of their immigration status to enroll in state-only funded Medi-Cal.	➤ Expand access to coverage for adults ineligible for Medi-Cal because of their immigration status.	➤ No federal authority invoked; no federal Medicaid funding permitted.	N/A

Table 1. Comparison and Summary of Policy Approaches, *continued*

	POLICY GOALS	KEY FEDERAL AUTHORITIES INVOKED	POTENTIAL PATHWAYS TO FEDERAL APPROVAL Granting waiver approval is at the discretion of an administration.
4. Public option. Create a state-sponsored public coverage alternative that would be available statewide through Covered California and offered alongside other marketplace plans.	► Ensure consumer choice. ► Enhance marketplace plan competition. ► Potentially improve continuity for Californians whose eligibility shifts between Medi-Cal and Covered California.	► Title I of the Affordable Care Act	► An Affordable Care Act Title I Section 1332 waiver would be needed if California seeks to modify marketplace rules. ► No federal authority necessary if all marketplace requirements are met by the public option.

About the Author

Manatt Health, a division of Manatt, Phelps & Phillips, LLP, is a fully integrated, multidisciplinary legal, regulatory, advocacy, and strategic business advisory health care practice. Manatt Health's extensive experience spans the major issues re-inventing health care, including payment and delivery system transformation; health IT strategy; health reform implementation; Medicaid re-design and innovation; health care mergers and acquisitions; regulatory compliance; privacy and security; corporate governance and restructuring; pharmaceutical market access, coverage and reimbursement; and game-changing litigation shaping emerging law.

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About the Foundation

The California Health Care Foundation is dedicated to advancing meaningful, measurable improvements in the way the health care delivery system provides care to the people of California, particularly those with low incomes and those whose needs are not well served by the status quo. We work to ensure that people have access to the care they need, when they need it, at a price they can afford.

CHCF informs policymakers and industry leaders, invests in ideas and innovations, and connects with changemakers to create a more responsive, patient-centered health care system.

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