

2017 Waiver for State Innovation

ACA Requirements that may be Waived		
Provision	Summary	Comments
Part I of subtitle D of Title I <i>Establishment of QHPs</i>	Section 1301: Definition of Qualified Health Plans Section 1302: Essential Health Benefits Requirements <ul style="list-style-type: none"> ▪ Essential Health Benefits ▪ Annual Limitation on Cost-Sharing ▪ Annual Limitation on Deductible for Employer Sponsored Plans ▪ Levels of Coverage Defined (Bronze, Silver, Gold and Platinum) ▪ Catastrophic Plans ▪ Child Only Plans Section 1303: Special Rules Section 1304: Related Definitions <ul style="list-style-type: none"> ▪ Group and Individual Markets ▪ Large and Small Employer ▪ Rules for Determining Employer Size 	<p>The Special Rules section largely relates to abortion issues such as no pre-emption of state abortion laws and no federal funding for abortion.</p> <p>Note that HHS must determine that the state plan (waiver) will provide coverage that is at least as comprehensive as the essential health benefits as a condition of granting the waiver.</p>
Part II of subtitle D of Title I <i>Consumer Choices and Insurance Competition Through Health Benefit Exchanges</i>	Section 1311: Affordable Choices of Health Benefit Plans <ul style="list-style-type: none"> ▪ Establishment of Exchanges Section 1312 Consumer Choice <ul style="list-style-type: none"> ▪ Employee choice ▪ Single Risk Pool ▪ Nothing prohibits operation of a market outside of Exchanges ▪ Choice for individuals to enroll in a QHP or participate in an Exchange ▪ Access to Exchange limited to citizens and lawful residents ▪ In 2017 Exchange can offer large group coverage Section 1313 Financial Integrity <ul style="list-style-type: none"> ▪ An Exchange shall keep an accurate accounting of all activities, receipts and expenditures. 	
Section 1402 of the ACA	Section 1402: Reduced Cost-Sharing for Individuals Enrolling in Qualified Health Plans	
Section 36B of the IRS code (Part I of subtitle E)	Section 36B: Refundable Credit for Coverage Under a Qualified Health Plan <ul style="list-style-type: none"> ▪ Premium assistance amount. ▪ Eligibility for premium assistance (income between 100%-400% FPL, coverage 	A state will receive funds for implementing the waiver equal to any subsidies or tax

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of Title 1: Section 1401)	purchased must provide minimum essential coverage, individual cannot have access to affordable employer sponsored coverage, etc).	credits for which residents would otherwise receive if the state had not received a waiver. [Section 1332 (a)(3) Pass Through Funding]
Section 4980H of the IRS code (Part II of subtitle F of Title I: Section 1513)	<p>Section 4980(H): Shared Responsibility for Employers regarding Health Coverage</p> <ul style="list-style-type: none"> ▪ Penalty for large employers (50 or more FTE's) not offering health insurance. <ul style="list-style-type: none"> ○ If at least one full time employee accesses the premium tax credit or reduced cost-sharing, the penalty is \$2,000 annually times the number of full-time employees minus 30. ▪ Penalty for large employers (50 or more FTE's) who offer minimum essential coverage but have full time employees who accessed the premium tax credit or cost sharing. <ul style="list-style-type: none"> ○ The penalty is \$3,000 annually for each full-time employee receiving a tax credit, up to a maximum of \$2,000 times the number of full time employees minus 30. ▪ FTE means an employee who is employed on average at least 30 hours of service per week. ▪ Exemption for Certain Employees <ul style="list-style-type: none"> ○ Workforce exceeds 50 full-time employees for 120 or fewer days during the calendar year, and ○ The employees in excess of 50 employed during such 120-day period were seasonal workers. ▪ Definition of Seasonal Workers ▪ Rules for Determining Employer Size 	
Section 5000A of the IRS Code (Part I of subtitle F of Title I: Section 1501)	<p>Section 5000A of the IRS Code: Requirement to Maintain Minimum Essential Coverage</p> <ul style="list-style-type: none"> ▪ Beginning January 1, 2014, individuals and dependents must have minimum essential coverage each month. <ul style="list-style-type: none"> ○ Failure to do so results in a penalty. ▪ Monthly Penalty Amounts ▪ Exemptions ▪ Definition of Minimum Essential Coverage 	

State Plan Requirements Necessary for Waiver Approval

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Section 1332 (b)(1)(A)	<ul style="list-style-type: none"> ▪ The Secretary must determine that the State Plan will provide coverage that is at least as comprehensive as the coverage defined in section 1302(b) [EHBs] and offered through Exchanges. <ul style="list-style-type: none"> ○ The Office of the Actuary of the Centers for Medicare & Medicaid Services must certify that this is the case, based on sufficient data from the State and from comparable States about their experience with programs created by the ACA and the provisions of the ACA that would be waived. 	
Section 1332 (b)(1)(B)	<ul style="list-style-type: none"> ▪ The Secretary must determine that the state plan will provide coverage and cost sharing protections against excessive out-of-pocket spending that are at least as affordable as the provisions in Title 1 of the ACA. 	
Section 1332 (b)(1)(C)	<ul style="list-style-type: none"> ▪ The Secretary must determine that the state plan will provide coverage to at least a comparable number of its residents as the provisions in Title 1 of the ACA would provide. 	
Section 1332(b)(1)(D)	<ul style="list-style-type: none"> ▪ The Secretary must determine that the State Plan will not increase the Federal deficit. 	

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§ 33.102(a)	<p>Coordination with applications for waivers under other Federal laws.</p> <ul style="list-style-type: none"> ▪ A state may submit a single application to the Secretary of HHS for a waiver under section 1332 (Waiver for State Innovation) and a waiver under one or more of the existing waiver processes applicable under titles XVIII, XIX, and XXI of the Social Security Act, or under any other Federal law relating to the provision of health care items or services. 	
§ 33.102(b)	<p>Coordinated process for section 1332 waivers.</p> <ul style="list-style-type: none"> ▪ States seeking a section 1332 waiver must submit a waiver application to the Secretary of HHS. The Secretary of HHS will send the application to the Secretary of Treasury if it contains a request for a waiver from the following sections of the IRS code: 36B (tax credits), 4980H (shared responsibility for employers), or 5000A (minimum essential coverage). 	
§ 33.108(a)	<p>Acceptable formats for applications.</p> <ul style="list-style-type: none"> ▪ Waiver applications must be submitted in electronic format to the Secretary of HHS. 	
§ 33.108(b)	<p>Application timing.</p> <ul style="list-style-type: none"> ▪ Waiver applications for initial approval must be submitted sufficiently in advance of the requested effective date to allow for an appropriate implementation timeline. 	
§ 33.108(c)	<p>Preliminary review.</p> <ul style="list-style-type: none"> ▪ Each waiver application will be subject to a preliminary review by the Secretaries of Treasury and HHS, who will determine whether the application is complete. ▪ The application will not be deemed received until the Secretaries have made a preliminary determination that the application is complete. ▪ The preliminary review will be complete within 45 days after the application is submitted. ▪ If a waiver application is deemed incomplete, the Secretaries will send the state a written notice detailing the elements missing from the application. 	
§ 33.108(d)	<p>Notification of preliminary determination.</p> <ul style="list-style-type: none"> ▪ Once a preliminary determination is made that the application is complete, the state will receive a written notice from HHS. That date will mark the beginning of the federal public notice process and the 180 day decision-making period. 	
§ 33.108(e)	<p>Public notice of completed application.</p> <ul style="list-style-type: none"> ▪ Upon receipt of a completed application, the Secretary of HHS will: <ul style="list-style-type: none"> ○ Make available to the public the application, and all related state submissions. ▪ Indicate the status of the application. 	
§ 33.108(f)	<p>Criteria for a complete application. An application must meet <u>all</u> of the following conditions to be deemed complete:</p>	The preamble to the final regulation clarifies that a

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	<ul style="list-style-type: none"> ▪ Complies with §§ 33.108 (a)-(f). ▪ Provides written evidence of the State’s compliance with the public notice requirements set forth in § 33.112, including a description of the key issues raised during the State public notice and comment period. ▪ Provides all of the following: <ul style="list-style-type: none"> ○ A comprehensive description of required legislation and program to implement a plan meeting the waiver requirements; ○ A copy of the enacted State legislation that provides the State with authority to implement the proposed waiver (required under section 1332(a)(1)(C) of the ACA); ○ A list of the provisions of law that the State seeks to waive, including a description of the reason for the specific requests; and ○ The analyses, actuarial certifications, data, assumptions, analysis, targets and other information set forth in § 33.108(f)(4) sufficient to provide the Secretaries with enough information to determine that the State’s proposed waiver meets the following ACA requirements: <ul style="list-style-type: none"> ▪ Provides coverage at least as comprehensible as the EHBs, as certified by the Office of the Actuary of CMS [§ 1332(b)(1)(A)]. ▪ Provides coverage and cost sharing protections against excessive out of pocket spending that are at least as affordable as the provisions of Title I of the ACA would provide [§ 1332(b)(1)(B)]. ▪ Provides coverage to at least a comparable number of its residents as the provisions of Title I of the ACA would provide [§ 1332(b)(1)(C)]. ▪ Will not increase the federal deficit [§ 1332(b)(1)(A)]. 	<p>State does not have to enact a new law in support of a section 1332 waiver if the State already has a law in place.</p>
<p>§ 33.108(f)(4)</p>	<p>Criteria for a complete application, continued: A complete application must contain the following supporting information:</p> <ul style="list-style-type: none"> ▪ Actuarial analyses and actuarial certifications. ▪ Economic analyses, including a 10 year budget plan that is deficit neutral to the Federal government and a detailed analysis on the estimated impact of the waiver on health insurance coverage in the state. ▪ Data and assumptions including information on the age, income, health expenses and current health insurance status of the relevant state population, the number of employers by number of employees and whether the employer offers insurance; cross tabulations of these variables; and an explanation of data sources and quality. 	

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	<ul style="list-style-type: none"> ▪ Implementation timeline. ▪ Additional information supporting the waiver including: <ul style="list-style-type: none"> ○ An explanation as to whether the waiver increases or decreases the administrative burden on individuals insurers and employers, and if so, how and why; ○ An explanation of how the waiver will affect the implementation of the ACA which the State is not requesting to waive in the State and at the Federal level; ○ An explanation of how the waiver will affect residents who need to obtain health care services out of State, as well as the States in which such residents may seek such services; ○ If applicable, an explanation as to how the State will provide the Federal government with all information necessary to administer the waiver at the Federal level; and ○ An explanation of how the State’s proposal will address potential individual, employer, insurer, or provider compliance, waste, fraud and abuse within the State or in other States. ▪ Reporting targets ▪ Other information consistent with guidance provided by HHS. ▪ Additional supporting information as needed by Treasury or HHS to address public comments. 	
§ 33.112(a)	<p>General State public notice requirements.</p> <ul style="list-style-type: none"> ▪ Prior to submitting a waiver application, a State must provide a public notice and comment period sufficient to ensure a meaningful level of public input for the application. <ul style="list-style-type: none"> ○ A state with one or more federally recognized Indian tribes must have a separate process for meaningful consultation with such tribes. 	<p>In the preamble to the final regulation, Treasury indicates that a State could use a Medicaid consultation process to satisfy the consultation needed for a section 1332 waiver. Treasury encourages States to consider whether the use of such a process would be appropriate for section 1332 proposals.</p>
§ 33.112(b)	<p>Public notice and comment period.</p> <ul style="list-style-type: none"> ▪ The state shall make available the following information through its Web site or other effective means of communication: <ul style="list-style-type: none"> ○ A comprehensive description of the waiver application. 	

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	<ul style="list-style-type: none"> ○ Information on where copies of the waiver application are available. ○ Information relating to how and where written comments may be submitted and reviewed by the public and the timeframe during which comments will be accepted. ○ The location, date and time of public hearings that will be convened by the State. 	
§ 33.112(c)	<p>Public hearings.</p> <ul style="list-style-type: none"> ▪ Prior to submitting the waiver application, a State must conduct public hearings regarding the State's application. 	
§ 33.112(d)	<p>Submission of initial application.</p> <ul style="list-style-type: none"> ▪ A state may submit a waiver application after the public notice and comment period have concluded. 	
§ 33.116 (a)-(b)	<p>Federal public notice and comment period.</p> <ul style="list-style-type: none"> ▪ The federal public notice and approval process begins on the first business day after the Secretaries determine the waiver application is complete. ▪ The federal public notice and comment period will be sufficient to ensure a meaningful level of public input. ▪ The Secretaries will make the waiver application and other supporting material available on their web sites and in other ways, along with information relating to where and how comments may be submitted and reviewed. 	
§ 33.116(c)	<p>Approval of a section 1332 waiver application.</p> <ul style="list-style-type: none"> ▪ A final decision on a waiver application will be issued by the Secretaries no later than 180 days after the determination by the Secretaries that a complete application was received. 	
§ 33.120(a)	<p>Monitoring and compliance (General).</p> <ul style="list-style-type: none"> ▪ After the issuance of a final decision to approve a waiver application, a state must comply with all Federal laws, regulations interpretive policy statements and interpretive guidance unless waived. ▪ A State must comply with the terms and conditions of the agreement between the Secretaries and the State to implement the waiver. 	
§ 33.120(b)	<p>Implementation reviews.</p> <ul style="list-style-type: none"> ▪ The terms and conditions of an approved waiver will provide that the State will perform periodic reviews of the implementation of the waiver. ▪ The Secretaries will review documented complaints that a state is failing to comply with requirements specified in the terms and conditions. ▪ Complaints will be promptly shared with states. 	

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§ 33.120(c)	<p>Post award.</p> <ul style="list-style-type: none"> ▪ Within 6 months after the implementation date of the waiver and annually thereafter, a State must hold a public hearing forum to solicit comments on the progress of the waiver. A summary of the forum must be provided to HHS as part of the state’s quarterly and annual reports. 	
§ 33.120 (d)-(f)	<p>Terminations and suspensions/closeout costs/federal evaluators.</p> <ul style="list-style-type: none"> ▪ The Secretaries reserve the right to suspend or terminate a waiver in whole or in part, at any time whenever they determine that a State has materially failed to comply with the terms of the waiver. ▪ If all or part of the waiver is terminated, suspended or withdrawn, Federal funding is limited to normal closeout costs ▪ A State must fully cooperate with the Secretaries or an independent evaluator to undertake an independent evaluation of any component of the waiver. 	
§ 33.124(a)	<p>Quarterly reports</p> <ul style="list-style-type: none"> ▪ States must submit quarterly reports to the Secretaries that include but are not limited to reports of any ongoing operational challenges and plans for and results of associated corrective actions. 	
§ 33.124(b)	<p>Annual reports</p> <ul style="list-style-type: none"> ▪ States must submit an annual report to the Secretaries documenting: <ul style="list-style-type: none"> ○ The progress of the waiver. ○ Data on compliance with waiver requirements contained in the ACA. ○ A summary of the annual post award public forum. ○ Other information consistent with the State’s approved terms and conditions. 	
§ 33.124(c)	<p>Submitting and publishing annual reports.</p> <ul style="list-style-type: none"> ▪ Annual reports are due no later than 90 days after the end of each waiver year, or as specified in the waiver’s terms and conditions. ▪ Within 60 days of receiving comments from the Secretaries, a State must submit to the Secretaries a final annual report for the waiver year. ▪ The draft and final reports must be published on the state’s public web site within 30 days of submission. 	
§ 33.128 (a)-(b)	<p>Periodic evaluation requirements.</p> <ul style="list-style-type: none"> ▪ The Secretaries must periodically evaluate the implementation of section 1332 waivers. ▪ Each periodic evaluation must include a review of the annual report or reports submitted by the State. 	