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1332 State Innovation Waivers: What can be Waived?

Manatt Health Solutions
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Agenda

- **Review of 1332 Basics**
- **What can be Waived Pertaining to QHPs and EHBs?**
- **What can be Waived Pertaining to Exchanges?**
- **What can be Waived Pertaining to Cost Sharing?**
- **What can be Waived Pertaining to Tax Credits, Individual, and Employer Mandate?**
- **Discussion**

Review of 1332 Basics

What can be Waived?

States may request waivers from HHS and the Treasury Department of certain requirements of the Affordable Care Act (ACA), effective 01/01/2017

1 *Individual Mandate*

States can modify or eliminate the tax penalties that the ACA imposes on individuals who fail to maintain health coverage.

2 *Employer Mandate*

States can modify or eliminate the penalties that the ACA imposes on large employers who fail to offer affordable coverage to their full-time employees.

3 *Benefits and Subsidies*

States may modify the rules governing covered benefits and subsidies. States that reallocate premium tax credits and cost-sharing reductions may receive the aggregate value of those subsidies for alternative approaches.

4 *Exchanges and QHPs*

States can modify or eliminate QHP certification and the Exchanges as the vehicle for determining eligibility for subsidies and enrolling consumers in coverage.

ACA § 1332(a)(2)

Section 1332 waivers can be coordinated with 1115 waivers, which may create opportunities for states to address differences among these federal programs that may impede efforts to pursue multi-payer delivery system reform.

What can't be Waived?

States may not waive guaranteed issue and related rating rules

Fair play rules

States may not waive non-discrimination provisions prohibiting carriers from denying coverage or increasing premiums based on medical history. States are precluded from waiving rules that guarantee equal access at fair prices for all enrollees.

What are the Statutory Guardrails?

A state waiver application must satisfy four criteria to be granted

1 *Scope of Coverage*

The waiver must provide coverage to at least as many people as the ACA would provide without the waiver.

2 *Comprehensive Coverage*

The waiver must provide coverage that is at least as “comprehensive” as coverage offered through the Exchange.

3 *Affordability*

The waiver must provide “coverage and cost sharing protections against excessive out-of-pocket” spending that is at least as “affordable” as Exchange coverage.

4 *Federal Deficit*

The waiver must not increase the federal deficit.

What can be Waived Pertaining to QHPs and EHBs?

Health Plan Requirements – EHB & AV

A state may waive key features of QHP requirements including the benefits which are considered essential and plan actuarial values

Essential Health Benefits



Ambulatory Patient Services



Prescription Drugs



Emergency Services



Rehabilitative & Habilitative Services & Devices



Hospitalization



Laboratory Services



Maternity and Newborn Care



Preventive & Wellness Services & Chronic Disease Management



Mental Health and Substance Use Disorder Services, including Behavioral Health Treatment



Pediatric Services, Including Oral & Vision Care

At Standard Actuarial Values



Platinum: Expected to cover 90% of the cost of benefits



Gold: Expected to cover 80% of the cost of benefits



Silver: Expected to cover 70% of the cost of benefits



Bronze: Expected to cover 60% of the cost of benefits



Catastrophic: HDHP for individuals up to age 30 or exempt from mandate

Waiver Examples:

- *Add a new EHB category to cover a highly valued service*
- *Add copper plans at 50% actuarial value to attract young and healthy risks*

Plan Design

A state may modify or eliminate specific features of plan design required by the ACA

1 **Limitations on Cost Sharing**

Maximum amount of cost-sharing which can be incurred under a plan. In 2015, \$6,600 for individuals and \$13,200 for families on Exchange

2 **Limitations on QHPs**

QHPs must be certified, provide EHB, offer at least a silver and gold plan, same rates on and off Exchange, and not include group health plans

3 **Catastrophic Coverage**

Catastrophic plans must provide for full EHB coverage once an individual has incurred cost-sharing above the annual limitation

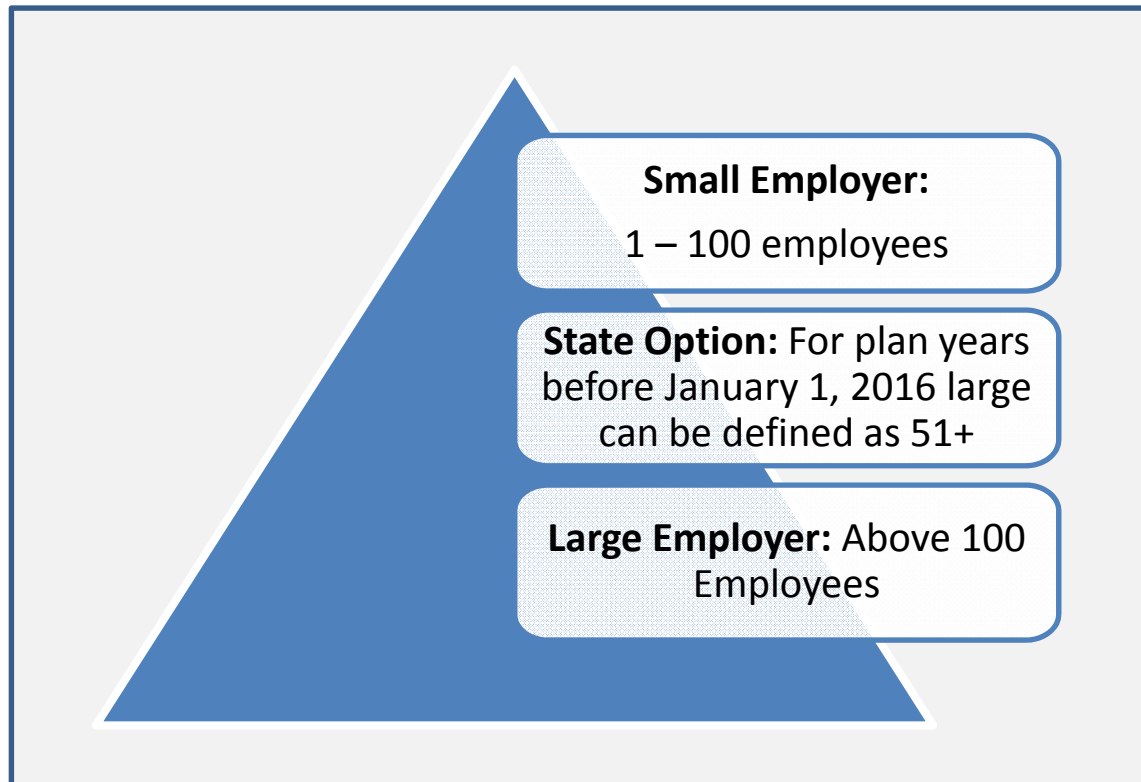
Waiver Examples:

- *Allow consumers to purchase catastrophic coverage regardless of age or exemption status*
- *Decrease annual maximums on deductibles to reduce cost sharing burdens*

ACA § 1301(a)(1), 1302, (b)(1)(B), 1302(c)(1), (c)(2)

Definition of Employer Size

The ACA defines the number of FTEs that constitutes small and large employers with a state option that expires in 2016 to define large employers as 51+ (taken by all states)



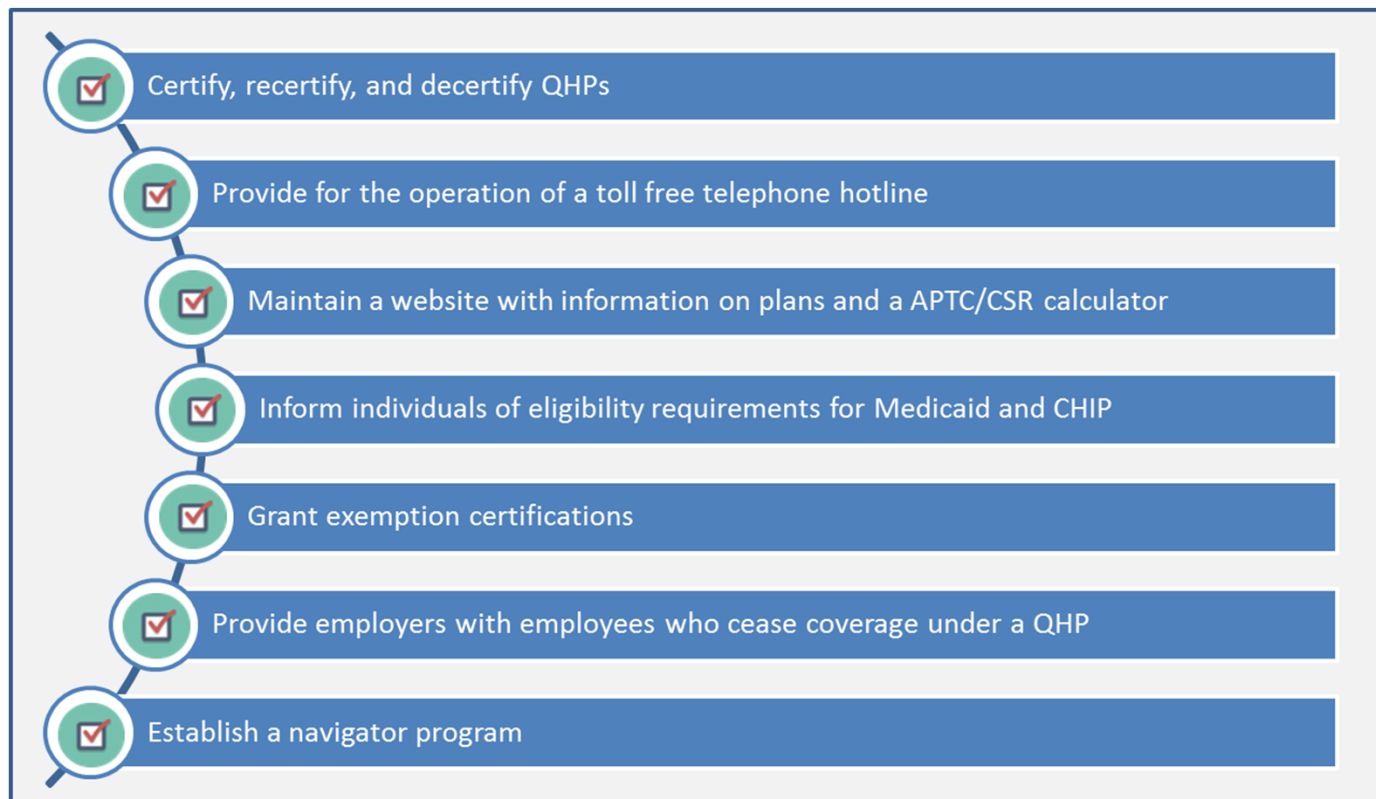
Waiver Examples:

- *Redefine small group as 1 – 50 to restore pre-ACA approach*
- *Require state employees or other large groups to purchase through Exchange*

What can be Waived Pertaining to Exchanges?

Exchange Framework

A state may choose to waive discrete functions of an Exchange or eliminate the Exchange entirely



Waiver Example:

- *Replace individual exchange with direct enrollment and web brokers*

Small Business Health Options Program

A state may eliminate the SHOP or change the requirements of SHOP to allow more individuals to enroll in SHOP coverage



Waiver Examples:

- *Eliminate SHOP and allow tax credits to be used with any licensed insurer*
- *Replace SHOP with private exchange that meets minimum standards*

Coverage Standards

A state may tailor their Exchange to the state's needs through waiving specific standards of the Exchange

1 **Coverage for qualified individuals**

Any individual who lives in the Exchange area, is not incarcerated, and is a citizen, or lawfully present may enroll in a QHP

2 **Open Enrollment Periods**

The Secretary will require an Exchange to provide for an annual open enrollment period and special enrollment periods

4 **Presenting Benefits**

QHPs will use a standard format to present their health plan's benefits

3 **QHP Quality**

Each Exchange rates QHPs on the basis of quality and price and provides rating on their website

Waiver Examples:

- *Move open enrollment to tax season (*Note: may not be possible outside Exchange)*
- *Revise quality rating standards (could avoid disruption if done before federal program implemented)*

Plan Certification

**A state may waive plan certification requirements
(which have largely been delayed already by CMS)**



Health plans seeking certification must provide the following:

- ☐ Claims payment policies and practices
- ☐ Periodic financial disclosures
- ☐ Data on enrollment
- ☐ Number of claims denied
- ☐ Rating practices
- ☐ Information on out-of-network coverage cost-sharing and payments
- ☐ Information on enrollee and participant rights
- ☐ Ability for individuals interested in purchasing the plan to learn about cost sharing under the plan through an internet website

Waiver Examples:

- *Decline certification of fee-for-service plans*
- *Require insurers to provide key data in machine readable formats*

ACA § 1311(e)(1)(B)(i), (e)(3)

Navigator Requirements

States may change specific requirements or waive their navigator program entirely

Conduct public education activities to raise awareness of the availability of QHPs

Facilitate enrollment in QHPs

Distribute information concerning enrollment and the availability of APTC/CSR

Display all plans in an impartial manner

Provide referrals to other state agencies



Waiver Example:

- *Eliminate navigators and expand assister program and/or agent partnerships*

What can be Waived Pertaining to Cost Sharing?

Cost-Sharing Reductions (CSR)

States may modify ACA Cost-sharing Reductions sliding scale (CSR)
or change population specific CSRs

Eligibility

- ✓ Enrolls in a silver level QHP
- ✓ Income between 100 – 400 percent FPL
- ✓ Eligible for APTC
- ✓ Indians under 300 percent FPL are eligible to have any cost sharing under the plan eliminated

TIERS OF COST-SHARING REDUCTIONS

CSR Tier	Income Range	Actuarial Value of the Silver Plan
1	Special populations < 100% FPL; 100% FPL – 150 %FPL	94%
2	150% FPL - 200% FPL	87%
3	200% FPL – 250% FPL	73%

Waiver Examples:

- Provide new or enhanced CSRs to targeted populations (e.g. pregnant women)
- Include CSRs in Actuarial Value for eligible individuals instead of separate CSR

ACA § 1402 (b), (c)(2), (d)(1), (f)(2)

What can be Waived Pertaining to Tax Credits, Individual and Employer Mandates?

Advance Payments of the Premium Tax Credit

States may modify the ACA APTC scale and eligibility criteria

Eligibility

- ✓ Income between 100 – 400 percent FPL
- ✓ Not eligible for Medicaid or other MEC
- ✓ Income below 100% FPL who is ineligible for Medicaid as a result of being an alien lawfully present in the United States
- ✓ Not eligible for employer sponsored coverage or eligible for employer sponsored coverage which is not affordable (exceeds 9.5% of household income) or does not meet minimum value (covers less than 60% of cost of benefits).

APTC Amount

Income Level	Premium as Percent of Income
Up to 133% FPL	2% of income
133 – 150% FPL	3 – 4% of income
150 – 200% FPL	4 – 6.3% of income
200 – 250% FPL	6.3 – 8.05% of income
250 – 300% FPL	8.05 – 9.5% of income
300 – 400% FPL	9.5% of income

Tax credit is difference between premium of **second lowest cost silver plan (SLCSP)** available to family and amount described above

Internal Revenue Code § 36B (c)(1)(B), (c)(2), (d)(3)(B)

Waiver Examples:

- Simplify APTC with a full credit up to 200% FPL, medium credit to 300% FPL, and low credit to 400% FPL.
- Align update of poverty line for FPL calculations between Medicaid and Exchange.
- A state might be able to respond to an adverse King ruling by waiving “Established by the State”

Employer Shared Responsibility Payment

States may waive the employer responsibility provision entirely or waive components of employer requirements

1 **Employer Fails to Offer MEC**

A large employer who fails to offer FTEs the opportunity to enroll in MEC will be assessed a penalty if employee enrolls in QHP

2 **Employer Offers MEC**

A large employer who offers FTEs coverage which is not affordable or minimum value will be assessed a penalty if employee enrolls in QHP

3 **Large Employer Definition**

Employers with at least 50 FTEs are considered large employers unless workforce consists of seasonal workers who work 120 days or fewer

4 **FTE Definition**

The term FTE means an employee who is employed on average at least 30 hours of service per week

Waiver Examples:

- *Replace employer mandate with requirement that employers pay percentage of payroll in benefits or taxes (pay or play)*
- *Redefine FTE hours to better fit state market (including definition of seasonal employees)*

Internal Revenue Code § 4980H(a), (b), (c)(2), (c)(4)(A)

Individual Shared Responsibility Payment

States may waive the shared responsibility payment, add new exemption types, or change the amount of the penalty

Exemption Types:

- ☐ Religious Conscience
- ☐ Health Care Sharing Ministry
- ☐ Individuals Not Lawfully Present
- ☐ Incarcerated Individuals
- ☐ Affordability
- ☐ Income below filing threshold
- ☐ Members of Indian Tribes
- ☐ Short Coverage Gap
- ☐ Hardship exemption

Penalty Amount

Year	Amount is the greater of
2015	1% of household income or \$95
2016	2% of household income or \$325
2017	2.5% of household income or \$695

Waiver Examples:

- *Replace mandate with auto-enrollment, penalties on late enrollment or other alternatives*
- *Add or delete exemptions to better fit state preferences on scope of mandate*

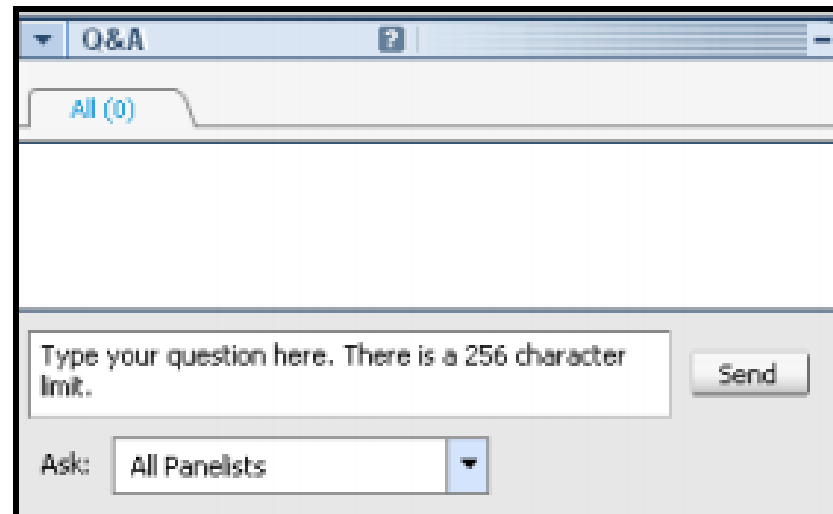
Internal Revenue Code § 5000A(a), (b), (c), (d)

Discussion

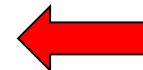
Submitting Questions

To ask a question:

1. Ask question using phone
2. Submit question in writing



A screenshot of a web-based Q&A submission interface. The window title is "Q&A". Below the title bar, there is a tab labeled "All (0)". The main content area is empty. At the bottom, there is a text input field with the placeholder text "Type your question here. There is a 256 character limit." and a "Send" button to its right. Below the text field, there is a label "Ask:" followed by a dropdown menu currently showing "All Panelists". A red arrow points to the "Send" button.



Thank you!

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