State Health Reform Assistance Network
Charting the Road to Coverage
1332 State Innovation Waivers:
What can be Waived?

Manatt Health Solutions
May 2015
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.

<table>
<thead>
<tr>
<th></th>
<th>Individual Mandate</th>
<th>Employer Mandate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>States can modify or eliminate the tax penalties that the ACA imposes on individuals who fail to maintain health coverage.</td>
<td>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.</td>
</tr>
<tr>
<td>2</td>
<td><strong>Benefits and Subsidies</strong>&lt;br&gt;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.</td>
<td><strong>Exchanges and QHPs</strong>&lt;br&gt;States can modify or eliminate QHP certification and the Exchanges as the vehicle for determining eligibility for subsidies and enrolling consumers in coverage.</td>
</tr>
</tbody>
</table>

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

ACA § 1301(a)(1), 1302(b)(2), (d)(1)

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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**

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

**Definition of Employer Size**

**Small Employer:** 1 – 100 employees

**State Option:** For plan years before January 1, 2016 large can be defined as 51+

**Large Employer:** Above 100 Employees

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

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ACA § 1304(b)
What can be Waived Pertaining to Exchanges?
A state may choose to waive discrete functions of an Exchange or eliminate the Exchange entirely.

- Certify, recertify, and decertify QHPs
- Provide for the operation of a toll free telephone hotline
- Maintain a website with information on plans and a APTC/CSR calculator
- Inform individuals of eligibility requirements for Medicaid and CHIP
- Grant exemption certifications
- Provide employers with employees who cease coverage under a QHP
- Establish a navigator program

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

<table>
<thead>
<tr>
<th></th>
<th>Coverage for qualified individuals</th>
<th>Open Enrollment Periods</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Any individual who lives in the Exchange area, is not incarcerated, and is a citizen, or lawfully present may enroll in a QHP</td>
<td>The Secretary will require an Exchange to provide for an annual open enrollment period and special enrollment periods</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Presenting Benefits</th>
<th>QHP Quality</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>QHPs will use a standard format to present their health plan’s benefits</td>
<td>Each Exchange rates QHPs on the basis of quality and price and provides rating on their website</td>
</tr>
</tbody>
</table>

**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)

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ACA § 1312(f), 1311(c)
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

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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
- Distribute information concerning enrollment and the availability of APTC/CSR
- Facilitate enrollment in QHPs
- 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

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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

<table>
<thead>
<tr>
<th>CSR Tier</th>
<th>Income Range</th>
<th>Actuarial Value of the Silver Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Special populations &lt; 100% FPL; 100% FPL – 150% FPL</td>
<td>94%</td>
</tr>
<tr>
<td>2</td>
<td>150% FPL– 200% FPL</td>
<td>87%</td>
</tr>
<tr>
<td>3</td>
<td>200% FPL – 250% FPL</td>
<td>73%</td>
</tr>
</tbody>
</table>

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

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ACA § 1402 (b), (c)(2), (d)(1), (f)(2)
What can be Waived Pertaining to Tax Credits, Individual and Employer Mandates?

IRS Code § 36B, 4980H, 5000A
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**

<table>
<thead>
<tr>
<th>Income Level</th>
<th>Premium as Percent of Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 133% FPL</td>
<td>2% of income</td>
</tr>
<tr>
<td>133 – 150% FPL</td>
<td>3 – 4% of income</td>
</tr>
<tr>
<td>150 – 200% FPL</td>
<td>4 – 6.3% of income</td>
</tr>
<tr>
<td>200 – 250% FPL</td>
<td>6.3 – 8.05% of income</td>
</tr>
<tr>
<td>250 – 300% FPL</td>
<td>8.05 – 9.5% of income</td>
</tr>
<tr>
<td>300 – 400% FPL</td>
<td>9.5% of income</td>
</tr>
</tbody>
</table>

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

**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”

Internal Revenue Code § 36B (c)(1)(B), (c)(2), (d)(3)(B)
### Employer Shared Responsibility Payment

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

<table>
<thead>
<tr>
<th>1</th>
<th><strong>Employer Fails to Offer MEC</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>A large employer who fails to offer FTEs the opportunity to enroll in MEC will be assessed a penalty if employee enrolls in QHP</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th><strong>Employer Offers MEC</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>A large employer who offers FTEs coverage which is not affordable or minimum value will be assessed a penalty if employee enrolls in QHP</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3</th>
<th><strong>Large Employer Definition</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers with at least 50 FTEs are considered large employers unless workforce consists of seasonal workers who work 120 days or fewer</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th><strong>FTE Definition</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The term FTE means an employee who is employed on average at least 30 hours of service per week</td>
<td></td>
</tr>
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</table>

**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)

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount is the greater of</th>
</tr>
</thead>
<tbody>
<tr>
<td>2015</td>
<td>1% of household income or $95</td>
</tr>
<tr>
<td>2016</td>
<td>2% of household income or $325</td>
</tr>
<tr>
<td>2017</td>
<td>2.5% of household income or $695</td>
</tr>
</tbody>
</table>

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

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Discussion
Submitting Questions

To ask a question:
1. Ask question using phone
2. Submit question in writing
Thank you!

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