

114TH CONGRESS
1ST SESSION

H. R. 3352

To amend the Patient Protection and Affordable Care Act and the Internal Revenue Code of 1986 to provide greater flexibility with respect to waivers granted to States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2015

Mr. HULTGREN introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Patient Protection and Affordable Care Act and the Internal Revenue Code of 1986 to provide greater flexibility with respect to waivers granted to States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “State Health Care Op-
5 tions Act of 2015”.

1 **SEC. 2. INCREASING STATE FLEXIBILITY THROUGH PROVI-**
2 **SION OF HEALTH-FLEX AND EXCHANGE WAIV-**
3 **ERS.**

4 (a) STATE OPTIONS.—

5 (1) IN GENERAL.—The Patient Protection and
6 Affordable Care Act is amended by inserting after
7 section 1332 (42 U.S.C. 18052) the following:

8 **“SEC. 1332A. OPTIONS FOR STATE FLEXIBILITY.**

9 “(a) STATE OPTIONS.—

10 “(1) IN GENERAL.—If a State provides to the
11 Secretary a notice (in this section referred to as a
12 ‘waiver notice’) of intent to implement a health-flex
13 waiver (described in subsection (b)(1)), an exchange
14 waiver (described in subsection (b)(2)), or both, and
15 such notice complies with paragraph (2), the waiver
16 shall be deemed to be approved and effective, except
17 as provided in paragraphs (5) and (6).

18 “(2) CONTENTS OF A WAIVER NOTICE.—A
19 waiver notice with respect to a State shall include
20 the following:

21 “(A) The years for which the waiver shall
22 be effective (which may be indefinite).

23 “(B) An assurance that the State will com-
24 ply with annual reporting requirements estab-
25 lished by the Secretary relating to the activities
26 of the State under the waiver, which reporting

1 requirements shall include information on af-
2 fordability, access, and transparency.

3 “(C) In the case of a health-flex waiver—

4 “(i) the requirements to be waived;

5 “(ii) an assurance that there will be
6 available throughout the State one or more
7 health plans that provide the catastrophic
8 level of coverage described in subsection
9 (c)(1)(B)(i) for which an enrollee’s re-
10 quired contribution (as defined in section
11 5000A(e)(1)(B) of the Internal Revenue
12 Code of 1986, determined on an annual
13 basis) does not exceed 6.5 percent of the
14 median household income (as defined in
15 section 36B(d)(2)(A) of such Code) of resi-
16 dents of the State for the most recent tax-
17 able year for which information on such
18 median household income is available to
19 the Secretary; and

20 “(iii) an assurance that the certifying
21 entity (as defined in subsection (c)(2)) has
22 a process to certify health plans as permis-
23 sible health plans consistent with sub-
24 section (c).

1 “(D) In the case of an exchange waiver,
2 assurances that the State—

3 “(i) will be responsible for functions
4 that are necessary to carry out the waiver
5 that would otherwise be performed by an
6 Exchange;

7 “(ii) will comply with subsection (d);

8 “(iii) has the capability to receive
9 from the Secretary subsidy eligibility infor-
10 mation; and

11 “(iv) has and is applying standards
12 for privacy, security, and data encryption
13 for subsidy eligibility information that are
14 determined to be satisfactory by the Sec-
15 retary.

16 “(3) EFFECTIVENESS.—A waiver under this
17 section shall be effective for the years described in
18 the waiver notice under paragraph (2)(A), except
19 that no waiver under this section shall be effective
20 for a year unless the waiver notice for such waiver
21 was submitted before November 1 of the previous
22 year.

23 “(4) MODIFICATION OR TERMINATION.—A
24 State may modify or terminate a waiver for the
25 State under this section by submitting to the Sec-

1 retary a subsequent waiver notice with respect to
2 such waiver.

3 “(5) DISAPPROVAL AUTHORITY.—If the Sec-
4 retary determines that a waiver notice fails to com-
5 ply with paragraph (2) and notifies the State of the
6 reason for such determination not later than 30 days
7 after the date on which the State submits the waiver
8 notice, such waiver notice shall not be effective.

9 “(6) REVOCATION.—If the Secretary deter-
10 mines that a State is in violation of an assurance
11 submitted under paragraph (2) and notifies the
12 State of the reason for such determination, the Sec-
13 retary may revoke the waiver. Such revocation shall
14 be effective on the first day of the first year that be-
15 gins after the 60-day period that begins on the date
16 on which notification of the revocation occurs.

17 “(7) CONSTRUCTION.—Nothing in this section
18 shall be construed as requiring a State to enact a
19 law in order to carry out the provisions of this sec-
20 tion.

21 “(b) WAIVERS.—

22 “(1) HEALTH-FLEX WAIVER.—A waiver under
23 this paragraph (in this section referred to as a
24 ‘health-flex waiver’), with respect to a State, is a

1 waiver of any of the requirements in sections 1301
2 through 1303.

3 “(2) EXCHANGE WAIVER.—A waiver under this
4 paragraph (in this section referred to as an ‘ex-
5 change waiver’) permits a State to elect to be re-
6 sponsible for certain Exchange functions, including
7 serving as the certifying entity for the purposes of
8 subsection (c).

9 “(3) NO WAIVER OF ADULT CHILD COVERAGE
10 AND PREEXISTING CONDITIONS.—Nothing in this
11 subsection may be construed to permit a State to
12 waive the following:

13 “(A) PROHIBITION OF PREEXISTING CON-
14 DITION EXCLUSION.—Section 2704 of the Pub-
15 lic Health Service Act (42 U.S.C. 300gg–3).

16 “(B) EXTENSION OF COVERAGE FOR
17 ADULT CHILDREN.—Section 2714 of the Public
18 Health Service Act (42 U.S.C. 300gg–14).

19 “(c) CERTIFYING PERMISSIBLE HEALTH PLANS.—

20 “(1) PERMISSIBLE HEALTH PLAN DEFINED.—
21 For the purposes of this section, the term ‘permis-
22 sible health plan’ means, with respect to a State, a
23 health plan that is offered for sale in the individual
24 or small group market in the State and that is cer-

1 tified by a certifying entity to meet the following re-
2 quirements:

3 “(A) BENEFITS.—The plan provides bene-
4 fits for items and services within each of the
5 following categories:

6 “(i) Ambulatory patient services.

7 “(ii) Emergency services.

8 “(iii) Hospitalization.

9 “(iv) Physician services.

10 “(B) LEVELS OF COVERAGE.—The plan
11 provides a level of coverage that complies with
12 one of the following levels of coverage (as estab-
13 lished by the State):

14 “(i) Catastrophic.

15 “(ii) Standard.

16 “(iii) High.

17 “(C) TRANSPARENCY JUSTIFYING PRE-
18 MIUMS.—The issuer of the plan makes available
19 to the public information about the demo-
20 graphics of the population enrolled under the
21 plan, the utilization of health care items and
22 services by such population under the plan, and
23 other factors that serve as a justification for
24 the premium levels (including any premium in-
25 creases) under the plan.

1 “(D) INFORMATION REQUIREMENT.—The
2 issuer of the plan submits information as re-
3 quired under section 36B(g)(3)(C) of the Inter-
4 nal Revenue Code of 1986.

5 “(2) CERTIFYING ENTITY DEFINED.—In this
6 section, the term ‘certifying entity’ means—

7 “(A) in the case of a health plan that is
8 offered through an Exchange established by a
9 State, such Exchange; and

10 “(B) in the case of a health plan that is
11 not so offered, the State in which such plan is
12 offered.

13 “(3) EFFECT OF CERTIFYING PERMISSIBLE
14 HEALTH PLANS.—With respect to eligibility for pre-
15 mium assistance tax credits and reduced cost-shar-
16 ing for individuals enrolled in permissible health
17 plans, see section 36B(g) of the Internal Revenue
18 Code of 1986 and section 1402(f)(4) of the Patient
19 Protection and Affordable Care Act (42 U.S.C.
20 18071), respectively.

21 “(d) DETERMINING SUBSIDY ELIGIBILITY.—

22 “(1) IN GENERAL.—In the case of a State that
23 has in effect an exchange waiver, the State shall de-
24 termine the eligibility of individuals residing in the

1 State for the assistance described in subparagraphs
2 (A) and (B) of paragraph (3).

3 “(2) DISCLOSURE OF FEDERAL INFORMA-
4 TION.—In the case of a State that has in effect an
5 exchange waiver, the Secretary or the Secretary of
6 the Treasury, as appropriate, shall make subsidy eli-
7 gibility information available to the State, but only
8 the minimum amount of information necessary to
9 enable the State to determine the amount of the as-
10 sistance described in subparagraphs (A) and (B) of
11 paragraph (3) for which the individual enrolled in a
12 permissible health plan is eligible.

13 “(3) SUBSIDY ELIGIBILITY INFORMATION DE-
14 FINED.—In this subsection, the term ‘subsidy eli-
15 gibility information’ means information concerning the
16 eligibility of an enrollee or a prospective enrollee in
17 a health plan for—

18 “(A) a premium assistance credit under
19 section 36B(a) of the Internal Revenue Code of
20 1986; and

21 “(B) reduced cost-sharing under section
22 1402.”.

23 (2) REPORTING REQUIREMENTS.—The Sec-
24 retary shall establish annual reporting requirements
25 under 1332A(a)(2)(B) of the Patient Protection and

1 Affordable Care Act that include information on af-
2 fordability, access, and transparency.

3 (3) CONFORMING AMENDMENT.—The table of
4 contents of the Patient Protection and Affordable
5 Care Act is amended by inserting after the item re-
6 lating to section 1332 the following:

“Sec. 1332A. Options for State flexibility.”.

7 (b) SUBSIDIES FOR INDIVIDUALS ENROLLED IN PER-
8 MISSIBLE HEALTH PLANS.—

9 (1) PREMIUM ASSISTANCE TAX CREDITS.—Sec-
10 tion 36B of the Internal Revenue Code of 1986 is
11 amended—

12 (A) by redesignating subsection (g) as sub-
13 section (h); and

14 (B) by inserting after subsection (f) the
15 following:

16 “(g) SPECIAL RULES IN CASE OF WAIVERS UNDER
17 SECTION 1332A OF PPACA.—

18 “(1) LIMITING ELIGIBILITY TO TAXPAYERS
19 WITH INCOME AT OR BELOW 300 PERCENT OF
20 FPL.—In the case of a section 1332A State, sub-
21 section (c)(1)(A) shall be applied by substituting
22 ‘300 percent’ for ‘400 percent’ for a taxpayer who
23 obtains coverage through a plan issued under the
24 law of such State for a year.

1 “(2) PERMISSIBLE HEALTH PLANS.—In the
2 case of a taxpayer who obtains coverage with respect
3 to a section 1332A State, for a coverage month, a
4 permissible health plan, as defined in section
5 1332A(c)(1) of the Patient Protection and Afford-
6 able Care Act, shall be treated as a qualified health
7 plan with respect to such taxpayer.

8 “(3) ADJUSTED MONTHLY PREMIUM.—In the
9 case of a State that has in effect a health-flex waiver
10 described in section 1332A(b)(1) of such Act, sub-
11 section (b)(3)(C) shall be applied as if the adjusted
12 monthly premium calculated under such subsection
13 were multiplied by the ratio of the full actuarial
14 value of the benefits provided under the plan being
15 offered to the full actuarial value of essential health
16 benefits.

17 “(4) ELIMINATING CERTAIN REQUIREMENTS IN
18 THE CASE OF AN EXCHANGE WAIVER.—In the case
19 of a State that has in effect an exchange waiver de-
20 scribed in section 1332A(b)(2) of such Act for a cov-
21 erage month, the following shall apply:

22 “(A) ELIMINATING EXCHANGE REF-
23 ERENCES.—Subsections (b)(2)(A), (c)(2)(A)(i),
24 (d)(3)(B), and (e)(3) shall be applied by treat-

1 ing the permissible health plan as if it were of-
2 fered through an Exchange.

3 “(B) APPLICABLE SECOND LOWEST COST
4 SILVER PLAN.—Subsection (b)(3)(B) shall be
5 applied by substituting—

6 “(i) ‘qualified health plan for which, if
7 the adjusted monthly premium, taking into
8 account subsection (g)(3), were multiplied
9 by the ratio of 70 percent to the level of
10 coverage expressed as a percent of the full
11 actuarial value of the benefits provided
12 under the plan, the product of such mul-
13 tiplication would be the second lowest such
14 product for any plan offered in’ for ‘second
15 lowest cost silver plan of’, and

16 “(ii) ‘is offered in such rating area’
17 for ‘is offered through the same Exchange
18 through which the qualified health plans
19 taken into account under paragraph (2)(A)
20 were offered’.

21 “(C) INFORMATION REQUIREMENT.—In
22 the case of a permissible health plan which is
23 not offered through an Exchange, such plan
24 shall provide to the Secretary and to the indi-
25 vidual enrolled in the plan the information de-

1 scribed in subsection (f)(3) with respect to such
2 plan and such individual.

3 “(5) SPECIAL RULE FOR PART-TIME RESIDENT
4 TAXPAYERS WITH INCOME ABOVE 300 PERCENT OF
5 FPL.—In the case of a taxpayer who, during a tax-
6 able year, obtains coverage with respect to a 1332A
7 State and with respect to a State which is not a
8 1332A State, paragraph (1) shall not apply and the
9 premium assistance amount (otherwise determined
10 under subsection (b)(2)) for such taxpayer for a cov-
11 erage month shall be 0 if—

12 “(A) the household income of the taxpayer
13 for the taxable year equals or exceeds 300 per-
14 cent of an amount equal to the poverty line for
15 a family of the size involved, and

16 “(B) the taxpayer receives coverage with
17 respect to a section 1332A State for such cov-
18 erage month.

19 “(6) SECTION 1332A STATE DEFINED.—For
20 purposes of this subsection, the term ‘section 1332A
21 State’ means a State has in effect a waiver under
22 section 1332A of the Patient Protection and Afford-
23 able Care Act.”.

24 (2) REDUCED COST-SHARING.—Section 1402(f)
25 of the Patient Protection and Affordable Care Act

1 (42 U.S.C. 18071(f)) is amended by adding at the
2 end the following:

3 “(4) 1332A WAIVERS.—If a State has in effect
4 a waiver under 1332A, the following shall apply with
5 respect to a coverage month with respect to individ-
6 uals residing in the State on the first of the month:

7 “(A) ELIMINATING REDUCED COST-SHAR-
8 ING FOR INDIVIDUALS WITH INCOME ABOVE 300
9 PERCENT OF FPL.—No individual whose house-
10 hold income exceeds 300 percent of the poverty
11 line for a family of the size involved may be
12 considered an eligible insured under this sec-
13 tion.

14 “(B) PERMISSIBLE HEALTH PLANS.—For
15 the purposes of this section, a permissible
16 health plan, as defined in section 1332A(c)(A),
17 shall be treated as a qualified health plan.

18 “(C) EXCHANGE WAIVER.—If a State has
19 in effect an exchange waiver described in sec-
20 tion 1332A(b)(2), subsections (b)(1), (d)(1),
21 and (e)(3) shall apply as if there were no ref-
22 erences to an Exchange.”.

23 (c) ACCELERATION OF INNOVATION WAIVERS.—Sec-
24 tion 1332(a)(1) of the Patient Protection and Affordable
25 Care Act (42 U.S.C. 18052) is amended, in the matter

1 preceding subparagraph (A), by striking “January 1,
2 2017” and inserting “the date of the enactment of the
3 State Health Care Options Act of 2015”.

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