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114TH CONGRESS
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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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "State Health Care Options Act of 2015".

SEC. 2. INCREASING STATE FLEXIBILITY THROUGH PROVISION OF HEALTH-FLEX AND EXCHANGE WAIVERS.

(a) STATE OPTIONS.—

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

"SEC. 1332A. OPTIONS FOR STATE FLEXIBILITY.

"(a) STATE OPTIONS.—

"(1) IN GENERAL.—If a State provides to the Secretary a notice (in this section referred to as a 'waiver notice') of intent to implement a health-flex waiver (described in subsection (b)(1)), an exchange waiver (described in subsection (b)(2)), or both, and such notice complies with paragraph (2), the waiver shall be deemed to be approved and effective, except as provided in paragraphs (5) and (6).

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

"(A) The years for which the waiver shall be effective (which may be indefinite).

"(B) An assurance that the State will comply with annual reporting requirements established by the Secretary relating to the activities of the State under the waiver, which reporting

requirements shall include information on affordability, access, and transparency.

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

"(i) the requirements to be waived;

"(ii) an assurance that there will be available throughout the State one or more health plans that provide the catastrophic level of coverage described in subsection (c)(1)(B)(i) for which an enrollee's required contribution (as defined in section 5000A(e)(1)(B) of the Internal Revenue Code of 1986, determined on an annual basis) does not exceed 6.5 percent of the median household income (as defined in section 36B(d)(2)(A) of such Code) of residents of the State for the most recent taxable year for which information on such median household income is available to the Secretary; and

"(iii) an assurance that the certifying entity (as defined in subsection (c)(2)) has a process to certify health plans as permissible health plans consistent with subsection (c).

''(D) In the case of an exchange waiver, assurances that the State—

''(i) will be responsible for functions that are necessary to carry out the waiver that would otherwise be performed by an Exchange;

''(ii) will comply with subsection (d);

''(iii) has the capability to receive from the Secretary subsidy eligibility information; and

''(iv) has and is applying standards for privacy, security, and data encryption for subsidy eligibility information that are determined to be satisfactory by the Secretary.

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

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

retary a subsequent waiver notice with respect to such waiver.

''(5) DISAPPROVAL AUTHORITY.—If the Secretary determines that a waiver notice fails to comply with paragraph (2) and notifies the State of the reason for such determination not later than 30 days after the date on which the State submits the waiver notice, such waiver notice shall not be effective.

''(6) REVOCATION.—If the Secretary determines that a State is in violation of an assurance submitted under paragraph (2) and notifies the State of the reason for such determination, the Secretary may revoke the waiver. Such revocation shall be effective on the first day of the first year that begins after the 60-day period that begins on the date on which notification of the revocation occurs.

''(7) CONSTRUCTION.—Nothing in this section shall be construed as requiring a State to enact a law in order to carry out the provisions of this section.

''(b) WAIVERS.—

''(1) HEALTH-FLEX WAIVER.—A waiver under this paragraph (in this section referred to as a 'health-flex waiver'), with respect to a State, is a

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

''(2) EXCHANGE WAIVER.—A waiver under this paragraph (in this section referred to as an 'exchange waiver') permits a State to elect to be responsible for certain Exchange functions, including serving as the certifying entity for the purposes of subsection (c).

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

''(A) PROHIBITION OF PREEXISTING CONDITION EXCLUSION.—Section 2704 of the Public Health Service Act (42 U.S.C. 300gg–3).

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

''(c) CERTIFYING PERMISSIBLE HEALTH PLANS.—

''(1) PERMISSIBLE HEALTH PLAN DEFINED.—For the purposes of this section, the term 'permissible health plan' means, with respect to a State, a health plan that is offered for sale in the individual or small group market in the State and that is cer-

tified by a certifying entity to meet the following requirements:

''(A) BENEFITS.—The plan provides benefits for items and services within each of the following categories:

''(i) Ambulatory patient services.

''(ii) Emergency services.

''(iii) Hospitalization.

''(iv) Physician services.

''(B) LEVELS OF COVERAGE.—The plan provides a level of coverage that complies with one of the following levels of coverage (as established by the State):

''(i) Catastrophic.

''(ii) Standard.

''(iii) High.

''(C) TRANSPARENCY JUSTIFYING PREMIUMS.—The issuer of the plan makes available to the public information about the demographics of the population enrolled under the plan, the utilization of health care items and services by such population under the plan, and other factors that serve as a justification for the premium levels (including any premium increases) under the plan.

''(D) INFORMATION REQUIREMENT.—The issuer of the plan submits information as required under section 36B(g)(3)(C) of the Internal Revenue Code of 1986.

''(2) CERTIFYING ENTITY DEFINED.—In this section, the term 'certifying entity' means—

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

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

''(3) EFFECT OF CERTIFYING PERMISSIBLE HEALTH PLANS.—With respect to eligibility for premium assistance tax credits and reduced cost-sharing for individuals enrolled in permissible health plans, see section 36B(g) of the Internal Revenue Code of 1986 and section 1402(f)(4) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071), respectively.

''(d) DETERMINING SUBSIDY ELIGIBILITY.—

''(1) IN GENERAL.—In the case of a State that has in effect an exchange waiver, the State shall determine the eligibility of individuals residing in the

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

''(2) DISCLOSURE OF FEDERAL INFORMATION.—In the case of a State that has in effect an exchange waiver, the Secretary or the Secretary of the Treasury, as appropriate, shall make subsidy eligibility information available to the State, but only the minimum amount of information necessary to enable the State to determine the amount of the assistance described in subparagraphs (A) and (B) of paragraph (3) for which the individual enrolled in a permissible health plan is eligible.

''(3) SUBSIDY ELIGIBILITY INFORMATION DEFINED.—In this subsection, the term 'subsidy eligibility information' means information concerning the eligibility of an enrollee or a prospective enrollee in a health plan for—

''(A) a premium assistance credit under section 36B(a) of the Internal Revenue Code of 1986; and

''(B) reduced cost-sharing under section 1402.''.

(2) REPORTING REQUIREMENTS.—The Secretary shall establish annual reporting requirements under 1332A(a)(2)(B) of the Patient Protection and

Affordable Care Act that include information on affordability, access, and transparency.

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

"Sec. 1332A. Options for State flexibility.".

(b) SUBSIDIES FOR INDIVIDUALS ENROLLED IN PERMISSIBLE HEALTH PLANS.—

(1) PREMIUM ASSISTANCE TAX CREDITS.—Section 36B of the Internal Revenue Code of 1986 is amended—

(A) by redesignating subsection (g) as subsection (h); and

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

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

''(1) LIMITING ELIGIBILITY TO TAXPAYERS WITH INCOME AT OR BELOW 300 PERCENT OF FPL.—In the case of a section 1332A State, subsection (c)(1)(A) shall be applied by substituting '300 percent' for '400 percent' for a taxpayer who obtains coverage through a plan issued under the law of such State for a year.

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

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

''(4) ELIMINATING CERTAIN REQUIREMENTS IN THE CASE OF AN EXCHANGE WAIVER.—In the case of a State that has in effect an exchange waiver described in section 1332A(b)(2) of such Act for a coverage month, the following shall apply:

''(A) ELIMINATING EXCHANGE REFERENCES.—Subsections (b)(2)(A), (c)(2)(A)(i), (d)(3)(B), and (e)(3) shall be applied by treat-

ing the permissible health plan as if it were offered through an Exchange.

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

''(i) 'qualified health plan for which, if the adjusted monthly premium, taking into account subsection (g)(3), were multiplied by the ratio of 70 percent to the level of coverage expressed as a percent of the full actuarial value of the benefits provided under the plan, the product of such multiplication would be the second lowest such product for any plan offered in' for 'second lowest cost silver plan of', and

''(ii) 'is offered in such rating area' for 'is offered through the same Exchange through which the qualified health plans taken into account under paragraph (2)(A) were offered'.

''(C) INFORMATION REQUIREMENT.—In the case of a permissible health plan which is not offered through an Exchange, such plan shall provide to the Secretary and to the individual enrolled in the plan the information de-

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

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

''(A) the household income of the taxpayer for the taxable year equals or exceeds 300 percent of an amount equal to the poverty line for a family of the size involved, and

''(B) the taxpayer receives coverage with respect to a section 1332A State for such coverage month.

''(6) SECTION 1332A STATE DEFINED.—For purposes of this subsection, the term 'section 1332A State' means a State has in effect a waiver under section 1332A of the Patient Protection and Affordable Care Act.''.

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

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

''(4) 1332A WAIVERS.—If a State has in effect a waiver under 1332A, the following shall apply with respect to a coverage month with respect to individuals residing in the State on the first of the month:

''(A) ELIMINATING REDUCED COST-SHARING FOR INDIVIDUALS WITH INCOME ABOVE 300 PERCENT OF FPL.—No individual whose household income exceeds 300 percent of the poverty line for a family of the size involved may be considered an eligible insured under this section.

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

''(C) EXCHANGE WAIVER.—If a State has in effect an exchange waiver described in section 1332A(b)(2), subsections (b)(1), (d)(1), and (e)(3) shall apply as if there were no references to an Exchange.''.

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

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

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