

§ 33.118 Modification from the normal public notice requirements during an emergent situation.

(a) The Secretary and the Secretary of Health and Human Services may modify, in part, the State public notice requirements under § 33.112(a)(1), (b), (c), and (d) and the Federal public notice procedures under § 33.116(b) to expedite a decision on a proposed section 1332 waiver request during an emergent situation, when a delay would undermine or compromise the purpose of the proposed waiver request and be contrary to the interests of consumers. These flexibilities are limited to emergent situations, including natural disasters; public health emergencies; or other emergent situations that threaten consumers' access to comprehensive coverage, consumers' access to health care, or human life.

(b) A State must meet all of the following criteria to request a modification under paragraph (a) of this section:

(1) The State must request a modification under paragraph (a) of this section, in the form and manner specified by the Secretaries.

(2) The State must have acted in good faith, and in a diligent, timely, and prudent manner in the preparation of the request for a modification under paragraph (a) of this section, and the waiver application request, as applicable.

(3) The State must, as applicable, detail in its request for a modification from State-level notice procedures under paragraph (a) of this section the justification for the request as it relates to the emergent situation and the alternative public notice procedures it proposes to implement at the State level, including public hearings, that are designed to provide the greatest opportunity and level of meaningful public input from impacted stakeholders that is practicable given the emergency circumstances underlying the State's request for a modification.

(4) The State must, as applicable, detail in its request for a modification from Federal-level notice procedures under paragraph (a) of this section the justification for the request as it relates to the public health emergency and the alternative public notice pro-

cedures it requests to be implemented at the Federal level.

(5) The State must explain in its request for a modification from State-level notice procedures under paragraph (a) of this section how the emergent circumstances underlying its request results from a natural disaster; public health emergency; or other emergent situations that threaten consumers' access to comprehensive coverage, consumers' access to health care, or human life could not reasonably have been foreseen and how a delay would undermine or compromise the purpose of the waiver and be contrary to the interests of consumers.

(c) The Secretary and the Secretary of Health and Human Services will evaluate a State's request for a modification under paragraph (a) of this section and issue their exemption determination within approximately 15 calendar days after the request is received.

(d) The Secretary of Health and Human Services will publish on the Centers for Medicare and Medicaid Services (CMS) website any modification determinations within 15 calendar days of the Secretary and the Secretary of Health and Human Services making such a determination, as well as the approved revised timeline for public comment under the approved alternative State or Federal public notice procedures, as applicable.

(e) The State must publish on its website any modification requests and determinations within 15 calendar days of receipt of the determination, as well as the approved revised timeline for public comment under the alternative State or Federal public notice procedures, as applicable.

(f) The State must, as applicable, implement the alternative public notice procedures at the State level if the State's exemption request is approved and, if required, amend the waiver application request.

(g) The Departments will consider circumstances to be emergent when they could not have been reasonably foreseen. The Departments will assess "reasonable foreseeability" based on the specific issues that a section 1332 waiver proposes to address and other relevant factors, and will not make

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this assessment based solely on the number of days a State may have been aware of such issues.

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§ 33.120 Monitoring and compliance.

(a) *General.* (1) Following the issuance of a final decision to approve a section 1332 waiver by the Secretary and the Secretary of Health and Human Services, as applicable, a State must comply with all applicable Federal laws and regulations, unless expressly waived. A State must, within the timeframes specified in law and regulation come into compliance with any changes in Federal law and regulation affecting section 1332 waivers, unless the provision being changed is expressly waived.

(2) The Secretary and the Secretary of Health and Human Services will examine compliance with Federal and regulatory requirements consistent with §155.1308(f)(3)(iv) when conducting implementation reviews under paragraph (b) of this section.

(b) *Implementation reviews.* (1) The terms and conditions of an approved section 1332 waiver will provide that the State will perform periodic reviews of the implementation of the section 1332 waiver.

(2) The Secretary and the Secretary of Health and Human Services will review documented complaints that a State is failing to comply with requirements specified in the terms and conditions of any approved section 1332 waiver.

(3) The Secretary and the Secretary of Health and Human Services will promptly share with a State any complaint that the Secretary and the Secretary of Health and Human Services has received and will also provide notification of any applicable monitoring and compliance issues.

(c) *Post award.* Within 6 months after the implementation date of a section 1332 waiver and annually thereafter, a State must hold a public forum to solicit comments on the progress of a section 1332 waiver. The State must hold the public forum at which members of the public have an opportunity to provide comments and must provide a summary of the forum to the Sec-

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retary of Health and Human Services as part of the quarterly report specified in §33.124(a) that is associated with the quarter in which the forum was held, as well as in the annual report specified in §33.124(b) that is associated with the year in which the forum was held.

(1) *Notification requirements for public forum.* The State must publish the date, time, and location of the public forum in a prominent location on the State's public Web site, at least 30 days prior to the date of the planned public forum.

(2) *Modification from the normal post-award requirements during the public health emergency.* (i) The Secretary and the Secretary of Health and Human Services may modify, in part, State post award requirements under this paragraph (c)(2) for an approved section 1332 waiver request during an emergent situation, when the application of the post award public notice requirements would be contrary to the interests of consumers. These flexibilities are limited to emergent situations, including natural disasters; public health emergencies; or other emergent situations that threaten consumers' access to comprehensive coverage, consumers' access to health care, or human life.

(ii) A State must meet all of the following criteria to request a modification under paragraph (c) of this section:

(A) The State must request a modification under this paragraph (c)(2), in the form and manner specified by the Secretaries.

(B) The State must have acted in good faith, and in a diligent, timely, and prudent manner to comply with the monitoring and compliance requirement under the waiver and the terms and conditions of the agreement between the Secretary and the Secretary of Health and Human Services, as applicable, and the State to implement a section 1332 waiver and to submit and prepare the request for a modification under this paragraph (c)(2).

(C) The State must detail in its request for a modification under this paragraph (c)(2) the alternative post award public notice procedures it proposes to implement at the State level,