

Clover Health Waiver Request

Review and Discussion
June 30, 2021



Overview



- Clover Health, as a Direct Contracting Entity, is subject to the Board's oversight of ACOs under 18 V.S.A. § 9382 and GMCB Rule 5.000
- Clover Health is a Medicare-only ACO in Vermont, and therefore is not subject to the certification requirement
 - “In order to be eligible to receive payments from Medicaid or commercial insurance through any payment reform program or initiative, including an all-payer model, each accountable care organization shall obtain and maintain certification from the Green Mountain Care Board.” 18 V.S.A. § 9382(a)
- Clover would be subject to annual budget review and approval, unless waived
 - Rule and statute treat ACOs differently depending on whether they are more or less than 10,000 attributed lives

Overview (continued)



- News reports and public disclosure regarding Clover Health investigations and legal proceedings
 - Report of DOJ investigation into Clover Health was publicized, based on civil investigative demand letter issued to former Clover employee in October 2020¹
 - Clover Health responded to report at length²
 - Following that report, the SEC opened an investigation regarding Clover Health³
 - Clover and its directors and officers are defendants in securities class action lawsuits and shareholder derivative lawsuits, which were filed in February 2021 and Clover describes as generally based on the allegations in the Hindenburg Research piece.⁴
 - In 2016, CMS imposed a \$106,000 monetary fine on Clover for inaccurate statements that out-of-network providers were obligated to accept Clover enrollees. “Clover failed to correct the misleading statements after repeated notifications from CMS.”⁵

1 Clover Health: How the “King of SPACs” Lured Retail Investors Into a Broken Business Facing an Active, Undisclosed DOJ Investigation, February 4, 2021, Hindenburg Research, available at: <https://hindenburgresearch.com/clover/>.

2 Clover Health 8-K, Ex. 99.1, filed with SEC February 5, 2021, available at: <https://www.sec.gov/Archives/edgar/data/1801170/000119312521029637/d66346dex991.htm>

3 Clover Health 8-K, filed with SEC February 5, 2021, available at: <https://www.sec.gov/Archives/edgar/data/1801170/000119312521029629/d29087d8k.htm>

4 Clover Health 10-Q for quarter ended March 31, 2021, filed with SEC May 17, 2021, available at: https://www.sec.gov/ix?doc=/Archives/edgar/data/1801170/000095017021000268/clov-20210331.htm#notes_to_financial_statements

5 Letter from CMS to Clover Health re: Notice of Imposition of Civil Money Penalty for Medicare Advantage-Prescription Drug Contract Number: H5141, May 26, 2016, available at: https://www.cms.gov/Medicare/Compliance-and-Audits/Part-C-and-Part-D-Compliance-and-Audits/Downloads/Clover_CMP_05_26_16.pdf

Clover Health's Waiver Request



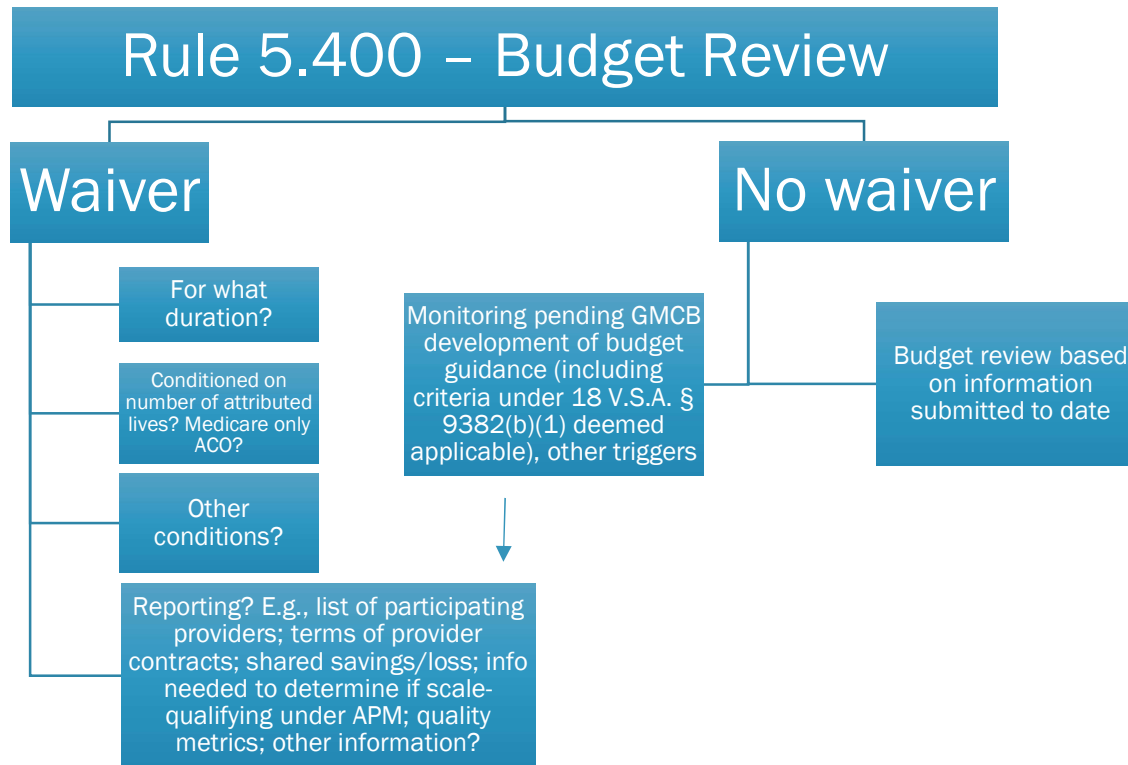
- Standard for waiver is:

5.601 Waiver of Rules

In order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause, the Board may waive the application of any provision of this Rule upon such conditions as it may require, unless precluded by the Rule itself or by statute. Any waiver granted by the Board shall be issued in writing and shall specify the grounds upon which it is based.

- Clover requested waiver of GMCB Rule 5.400 (annual budget review and approval) and GMCB Rule 5.500 (monitoring and oversight)

Waiver Request – Budget Review



Waiver Request – Monitoring and Enforcement

