

# Implementation Guide: Medicaid State Plan Administration Organization Intergovernmental Cooperation Act Waivers

---

## **Contents**

POLICY CITATION.....	2
BACKGROUND.....	2
Overview .....	2
Delegation of Fair Hearings .....	2
Waiver Process .....	2
REVIEWABLE UNIT DEPENDENCIES.....	4
INSTRUCTIONS .....	7
A. Intergovernmental Cooperation Act Waivers.....	7
B. Additional Information (optional) .....	9
REVIEW CRITERIA .....	9

# Intergovernmental Cooperation Act Waivers

## POLICY CITATION

**Statute:** Intergovernmental Cooperation Act of 1968 – 31 USC 6504

**Regulation:** 42 CFR 431.10; 42 CFR 431.11

## BACKGROUND

### Overview

This reviewable unit (RU) describes all waivers the state has under the authority of the Intergovernmental Cooperation Act of 1968 (ICA). The ICA waiver is a waiver of single state agency requirements that permits alternative arrangements for the performance of state agency functions by another state agency. This authority is generally granted to allow another state agency to conduct Medicaid fair hearings, but other Medicaid agency functions may be considered.

This RU is completed when the state indicates in the **Delegation and Authority** RU that another state agency administers a portion of the state plan through an ICA waiver. It also needs to be completed whenever an ICA waiver terminates. When this RU is completed for the first time, all current ICA waivers need to be added, both requested waivers and active waivers.

### Delegation of Fair Hearings

The state Medicaid agency may choose to delegate authority to conduct fair hearings of MAGI-based eligibility determinations to another state agency by requesting an ICA waiver, as long the state can assure sufficient oversight of the delegated fair hearing process. When a state has an ICA waiver permitting delegation of fair hearings to another state agency, the state is not required to offer individuals an option to have their hearing conducted by the Medicaid agency. We would expect the delegated entity, which is conducting fair hearings under an ICA waiver, to adhere to the same conditions in 42 CFR 431.10(c) and (d) related to delegation of fair hearings that apply to other delegated entities that do not require a waiver.

### Waiver Process

In order to receive an ICA waiver, the single state agency must demonstrate that:

- Sufficient oversight exists for the delegated fair hearing process.
- The delegated agency has been provided sufficient training to make fair hearing decisions and apply Medicaid laws and policies correctly.
- The responsibilities of the delegated agency have been clearly articulated, including the scope of review, whether the delegated entity has final decision making authority, and how the delegated entity coordinates with the single state agency regarding processing requests and other functions necessary to conduct fair hearings.
- A written agreement is in place between the delegated entity and the single state agency regarding the responsibilities of the delegated entity.
- A process has been established to monitor the accuracy and quality of decisions made by the delegated entity.

- The single state agency may also establish a process for reviewing fair hearing decisions issued by the delegated entity with respect to the proper application of federal and state law, regulations, and policies.

CMS will review the state's request and will approve the request if it meets the ICA requirements. CMS will then inform the state of approval and the state will enter the approval date into the template.

## REVIEWABLE UNIT DEPENDENCIES

Many RUs in MACPro are dependent upon other RUs. Each time a primary RU is changed, there could be an effect on other, secondary RUs which are dependent on the primary. For example, in the **Mandatory Eligibility Groups** RU, there is question as to whether the state covers the adult group. If **Yes** is selected, and if a box is checked to include the adult group in the submission package, then the **Adult Group** RU will be included by the system in the package and the user can navigate to it to complete it. If **No** is selected, the **Adult Group** RU will not be included in the package. In this example, the **Mandatory Eligibility Groups** RU is the Primary RU and the **Adult Group** RU is the Secondary RU. The **Adult Group** RU is considered to be dependent on selections made in the **Mandatory Eligibility Groups** RU.

Whenever a change in a primary RU may affect a secondary RU, you either need to revise the secondary RU (if it is already in the package) or add the secondary RU to the package so that it can be updated in the same submission package as the primary RU.

The following table explains the dependent relationships for the **Intergovernmental Cooperation Act Waivers** RU:

Primary RU	Secondary RU	Nature of Dependency	Actions Needed
Designation and Authority	Intergovernmental Cooperation Act Waivers	Unless the <b>Designation and Authority</b> RU (primary) has either been approved in MACPro or is included, completed and validated in the submission package, the <b>Intergovernmental Cooperation Act Waivers</b> RU (secondary) cannot be displayed.	If the secondary RU will not display because the primary RU is neither approved in MACPro nor included in the package, you need to: <ul style="list-style-type: none"> <li>• Add the primary RU to the package, complete it and validate it.</li> <li>• Alternatively, remove the secondary RU from the package.</li> </ul>

Primary RU	Secondary RU	Nature of Dependency	Actions Needed
Designation and Authority	Intergovernmental Cooperation Act Waivers	In section <b>C</b> of the <b>Designation and Authority</b> RU (primary), if <b>C.2.c.</b> has been selected (and was not selected in the last approved version in MACPro), indicating that another state agency administers a portion of the state plan through a waiver under the Intergovernmental Cooperation Act of 1968 (ICA waiver), the secondary RU – <b>Intergovernmental Cooperation Act Waivers</b> , must be included in the submission package.	If you changed the selection of the option in the primary RU to indicate the state plan is now partially administered through an ICA waiver, you must include and complete the secondary RU in the submission package.
Designation and Authority	Intergovernmental Cooperation Act Waivers	In section <b>C</b> of the <b>Designation and Authority</b> RU (primary), if <b>C.2.c.</b> has been de-selected (and <u>was</u> selected in the last approved version in MACPro), indicating that another state agency no longer administers a portion of the state plan through a waiver under the Intergovernmental Cooperation Act of 1968 (ICA waiver), the secondary RU – <b>Intergovernmental Cooperation Act Waivers</b> , must be included in the submission package.	If you changed the selection of the option in the primary RU to indicate the state plan is now <u>not</u> partially administered through an ICA waiver, you must include and complete the secondary RU in the submission package and enter the date the last waiver terminated.

Primary RU	Secondary RU	Nature of Dependency	Actions Needed
<p>Designation and Authority <u>and</u> Intergovernmental Cooperation Act Waivers</p>	<p>Eligibility Determinations and Fair Hearings</p>	<p>In section <b>C</b> of the <b>Designation and Authority</b> RU (primary), if <b>C.2.c.</b> has been selected, indicating that another state agency administers a portion of the state plan through a waiver under the Intergovernmental Cooperation Act of 1968 (ICA waiver), <u>and</u> in the <b>Intergovernmental Cooperation Act Waivers</b> RU (primary), there is at least one waiver in “Requested” or “Active” status, in the secondary RU – <b>Eligibility Determinations and Fair Hearings, B.1.b., State agency to which fair hearing authority is delegated under an ICA waiver</b> is displayed as an option.</p>	<p>If you indicated in the primary RU that administration of the state plan is partially administered through an ICA waiver, and you have entered at least one waiver and it is either in “Requested” or “Active” status, you need to check the option at <b>B.1.b.</b> in the secondary RU, if appropriate, to indicate whether fair hearing authority is delegated under the ICA waiver with respect to eligibility based on MAGI.</p>

## INSTRUCTIONS

### A. Intergovernmental Cooperation Act Waivers

- A table displays all Intergovernmental Cooperation Act waivers associated with the state. The table will display the following data:
  - Name of the state agency
  - Delegated Responsibility
  - Date Waiver Granted
  - Date of Termination (if Terminated)
  - Status (Requested, Active, Terminated)
  - Validation (indicating if saved data on the Add Waiver or Edit Waiver screen has been validated)
- To enter an Intergovernmental Cooperation Act waiver:
  - Click the **Add** button. The **Add Waiver** screen will appear.
  - At **1.**, enter the name of the state agency to which the Medicaid agency is delegating responsibility.
  - At **2.**, the **Date Waiver Granted** field will remain blank until CMS has granted the waiver. Once the date of approval is received from CMS, enter it into this field.
  - At **3.**, select one or both options **3.a.** and **3.b.** to indicate the types of responsibilities that are being delegated.
    - If **3.b.** is selected, click the **Add** button to add a type of delegated responsibility.
    - Provide the name of the delegated responsibility and a description in the text boxes that are provided.
    - Click the **Save** button to save this information. It will be added to the table of other types of delegated responsibility.
    - Select the **Close** button to exit without saving the information or after viewing an existing delegated responsibility without changing it.
    - Repeat this process to add additional types of delegated responsibilities.
  - At **4.**, provide a complete description of the scope of the delegated responsibilities.
  - At **5.**, provide assurances and information about how responsibilities are coordinated between the agencies.
    - At **5.a.**, indicate that the Medicaid agency retains oversight over the state plan as well as the development and issuance of all policies, rules and regulations on all program matters. To do this, check the box next to the assurance.
    - **5.b.** and **5.c.** will only appear if you selected **3.a.** above indicating that the state is delegating responsibility for conducting fair hearings. At **5.b.** and **5.c.**, indicate the state's compliance with requirements for establishing a process to monitor the appeals process and for informing applicants and beneficiaries of the fair hearing process. To do this, check the box next to these assurances.

- At **5.d.** and **5.e.**, indicate that the Medicaid agency ensures that the delegated entity complies with all legal and CMS requirements, and that there is a written authorization specifying the scope of the delegated authority and the responsibilities of the agencies involved. To do this, check the box next to each of these assurances.
      - Select either **5.e.i.** or **5.e.ii.**, or both, to indicate the nature of the formal agreement between the two agencies.
      - If **5.e.ii.** is selected, enter the statutory or regulatory citation in the text box provided.
    - **6.** will only appear if you selected **3.a.** above indicating that the state agency is delegating responsibility for conducting fair hearings. At **6.**, indicate if the single state agency has established a process for reviewing fair hearing decisions made by the delegated entity.
      - If **Yes** is selected, indicate the Medicaid agency's compliance with the requirements pertaining to these reviews. To do this, check the box next to the assurance.
    - At **7.**, provide a description of any additional methods that are used to coordinate responsibilities among the agencies. This is optional.
    - You may either save the data for the waiver without validating or you may validate it and save the information. Either way, select the **Back to RU Summary** button to return to the **Intergovernmental Cooperation Act Waivers RU**.
    - Information about the waiver will appear in the table on the RU screen. If you validated the waiver, a **check mark** will appear in the **Validation** column. If you saved without validating, an **X** will appear in the **Validation** column. All of the waivers in the table need to be validated before submitting this RU.
  - To edit a waiver that was previously entered by the state:
    - In the table, check the box next to the waiver and select the **Edit** button.
    - The waiver must be in **Requested** or **Active** status to edit it.
      - Waivers in **Active** status can only be edited prior to the submission package being approved by CMS. Once the package is approved, a new SPA must be submitted to request a new waiver.
      - To modify an **Active** waiver for which the package has been approved by CMS, you must terminate the waiver and enter a new waiver.
      - Terminated waivers cannot be edited.
    - The **Edit Waiver** screen will appear.
    - Make any necessary changes to the data on this screen and save it, with or without validating it.
    - Select the **Back to RU Summary** button to return to **the Intergovernmental Cooperation Act Waivers RU**.
  - To delete a waiver, it must be in **Requested** status.
    - Check the box next to the waiver and select the **Delete** button.
    - The waiver is removed from the table.
  - To terminate an **Active** Intergovernmental Cooperation Act Waiver
    - Check the box next to the waiver and select the **Terminate** button.



- An item **8., *Date Waiver Terminated***, text box will appear directly below the table.
- Enter the termination date and select the ***Confirm Termination*** link that appears below the text box, and then save and validate the screen.
- The status will change to ***Terminated*** and the ***Date of Termination*** date will appear in the table.

**B. Additional Information (optional)**

Except in limited circumstances, this field remains blank. Please consult with CMS before adding any additional information concerning this RU.

**REVIEW CRITERIA**

***Make sure that this RU is consistent with the choice at C.2.c. in the Designation and Authority RU:***

- ***If “Another state agency administers a portion of the state plan through a waiver under the Intergovernmental Cooperation Act of 1968” has been selected at C.2.c, this RU must be completed and there must be at least one waiver that is in requested or active status.***
- ***If the option at C.2.c. in the Designation and Authority RU was selected and is now de-selected, this RU should be included in the submission package and all waivers must have termination dates.***
- ***If the option at C.2.c. in the Designation and Authority RU has never been selected, this RU must not be included in the submission package.***

***If “Other” is selected at A.3.b., the description of the responsibility must be sufficiently clear and complete so that the reviewer can understand the responsibility being delegated.***

***The description of the scope of the delegation at A.4. must include the organizational arrangement, the nature and extent of responsibility, the resources and/or services utilized, and methods for coordinating responsibilities between the agencies and must be sufficiently clear, detailed and complete to permit the reviewer to understand how each delegated responsibility is handled by the agency to which it is delegated and how the agencies will work together to ensure a successful operation of the program.***