

FACT SHEET: Hawai'i: State Innovation Waiver

December 30, 2016

The U.S. Department of Health and Human Services and the U.S. Department of the Treasury (the Departments) approved Hawaii's application for a State Innovation Waiver under section 1332 of the Affordable Care Act (ACA) (the waiver). The waiver frees Hawaii from the requirement that it operate a Small Business Health Options Program (SHOP), as well as related provisions. The waiver will also allow the small business tax credit amounts that would otherwise be paid to small employers who purchase coverage through the SHOP to be provided to Hawaii and used primarily to support a state fund that helps small businesses offer health coverage.

Hawaii's State Innovation Waiver is approved subject to the state accepting specific terms and conditions (STCs). This approval is effective for January 1, 2017 through December 31, 2021.

Summary of Hawai'i's State Innovation Waiver Application

Hawaii has a long-standing state law, referred to as the Prepaid Health Care Act, which requires virtually all employers to offer coverage to their employees and provides small employers premium assistance.

Hawaii's application sought waiver of the ACA requirement that a SHOP operate in Hawaii and other related provisions relevant to SHOP Exchanges. Under this waiver, which is granted under the Departments' authority under section 1332 of the ACA, the following provisions of the ACA, together with Departmental regulations, policy statements, and guidance implementing those provisions, are waived in Hawaii for the purposes described in the state's application:

- Section 1311(b)(1)(B). State establishment of a Small Business Health Options Program (SHOP);
- Section 1321(c)(1). Solely with respect to federal establishment of a SHOP in Hawaii if the State elects not to establish a SHOP;
- Section 1312(a)(2). Employee choice of qualified health plans at a single level of coverage under ACA section 1302(d), and made available through the SHOP;
- Section 1312(f)(2)(A). Definition of "qualified employer";
- Section 1304(b)(4)(D)(i) and (ii). Continuation of participation in SHOP for growing small employers;
- Section 1301(a)(1)(C)(ii). Definition of a "qualified health plan" as one that agrees to offer at least one silver level plan and one gold level plan through an Exchange, solely with respect to the requirement that a QHP offer a silver and a gold level plan through the SHOP; and,
- Section 1301(a)(2). Solely with respect to the requirement that CO-OPs and multi-state plans be recognized as qualified health plans in the small group market.

Because providing SHOP coverage is a requirement for receiving the Small Business Health Care Tax Credit under section 45R of the Internal Revenue Code, waiving these provisions will prevent small employers in the state from being eligible for the credit. As such, the Small Business Health Care Tax Credit amounts that would otherwise be paid to small employers in the state will be provided as a pass-through payment to the state that will be used primarily to support a state fund that helps small businesses cover their health care costs.

The Departments have determined that Hawai'i's e waiver application meets the requirements outlined in Section 1332(b)(1) of the ACA and related [guidance](#). Specifically, the waiver is projected:

- to provide coverage at least as comprehensive as the coverage defined in section 1302(b),
- to provide coverage as affordable as would otherwise be provided,
- to provide coverage to at least a comparable number of, and
- to not increase the deficit.

Section 1332: State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing its residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA.

State Innovation Waivers allow states to develop innovative ways to provide access to quality health care as long as the plan provides coverage that is at least as comprehensive and affordable as would be provided absent the waiver, provides coverage to a comparable number of residents of the state as would be provided coverage absent a waiver, and does not increase the federal deficit.

State Innovation Waivers are available beginning January 1, 2017. State Innovation Waivers are approved for five-year periods, and can be renewed. Hawai'i is the first state to have such a waiver approved. Read more about State Innovation Waivers [here](#).

The letter to Hawai'i can be found [here](#).