

Hawaii: Section 1332 Waiver Extension

December 10, 2021

The U.S. Department of Health and Human Services and the U.S. Department of the Treasury (collectively, the Departments) approved Hawaii's application for an extension of its State Innovation Waiver (referred to as a "section 1332 waiver") under the Affordable Care Act (ACA) for an additional five years (for a waiver period of plan years (PYs) 2022 through 2026). Hawaii's section 1332 waiver extension application sought to continue waiving the ACA requirement that a Small Business Health Options Program (SHOP) operate in Hawaii and other related requirements relevant to SHOP Exchanges, to allow the state to continue with the state's Prepaid Health Care Act (Act) and associated requirements for employers beginning with plan year 2022.¹ The Departments have determined that implementation of this waiver plan will lower federal spending on Small Business Health Care Tax Credits (SBTC), to which Hawaii employers would have been entitled absent the waiver. These SBTC savings will be passed through to the state to be used for implementation of the waiver plan. This pass-through funding will be used primarily to support the state's Prepaid Health Care Premium Supplementation Fund (Fund), which helps small businesses offer affordable health coverage.

The Departments have determined that Hawaii's section 1332 waiver plan meets the requirements outlined in section 1332(b)(1) of the ACA. Specifically, the section 1332 waiver is projected:

- to provide coverage at least as comprehensive as coverage provided without the waiver;
- to provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided without the waiver;
- to provide coverage to at least a comparable number of people as would be provided without the waiver; and
- to not increase the federal deficit.

The extension of Hawaii's State Innovation Waiver under section 1332 of the ACA is approved subject to Hawaii accepting the specific terms and conditions (STCs). This waiver extension approval is effective for January 1, 2022 through December 31, 2026.

Summary of Hawaii's State Innovation Waiver Application

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

Hawaii's application for an extension of its State Innovation Waiver under section 1332 of the ACA seeks to waive the ACA requirement that a Small Business Health Options Program (SHOP) operate in Hawaii and other related provisions relevant to SHOP Exchanges. Specifically, Hawaii's waiver extension plan seeks to continue to waive the following sections of the ACA and continue implementation of the state's Act and related requirements under the waiver program:

- 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;

¹ See P.L. No. 97-473, §301 (29 U.S.C. §1144(b)(5))

- Section 1312(a)(2). Employee choice of qualified health plans (QHP) 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 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 QHPs in the small group market.

Because providing SHOP coverage is a requirement for receiving the SBTC 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 state will be able to continue collecting the SBTC money that would have gone to Hawaii employers and utilize pass-through funding towards the state’s Fund and Act. This fund helps cover the cost of employee coverage for small employers with fewer than eight employees.

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 residents with access to high-quality, affordable health insurance. These waivers provide states with the opportunity to develop strategies that best suit their individual needs. Through innovative thinking tailored to specific state circumstances, states can lower premiums for consumers, improve market stability, and increase consumer choice.

In order for a section 1332 waiver to be approved, the Departments must determine that the waiver meets statutory guardrails to provide coverage that is at least as comprehensive as the coverage provided without the waiver; provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as without the waiver; provide coverage to at least a comparable number of residents as without the waiver; and not increase the federal deficit.

State Innovation Waivers have been available since January 1, 2017; are approved for up to five-year periods; and can be extended. The Departments welcome the opportunity to work with states on section 1332 waivers. States interested in applying for a section 1332 waiver can find application tools and resources, including an application checklist and application templates, on the CMS website [here](#).

The section 1332 waiver extension approval letter and STCs for Hawaii can be found here:

https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-