



STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.labor.hawaii.gov](http://www.labor.hawaii.gov)  
Phone: (808) 586-8844 / Fax: (808) 586-9099  
Email: [dliir.director@hawaii.gov](mailto:dliir.director@hawaii.gov)

August 12, 2021

Chiquita Brooks-Lasure  
Administrator  
Center for Medicare & Medicaid Services

Mark Mazur  
Acting Deputy Secretary for Tax Policy  
Department of the Treasury

Dear Ms. Brooks-Lasure and Mr. Mazur:

Re: ACA Section 1332 Waiver Extension Application (Hawaii)

The State of Hawaii is pleased to submit the attached Section 1332 Waiver Extension Application for a five-year extension of our Section 1332 State Innovation Waiver.

The State's currently approved waiver of the ACA requirement that a Small Business Health Options Program (SHOP) operate in Hawaii and other related requirements relevant to SHOP Exchanges allows the State to continue with the State's Prepaid Health Care Act and associated requirements for employers from January 1, 2017 through December 31, 2021. The Departments' regulations, policy statements, and guidance implementing those provisions with respect to SHOPS and small employers are also waived. Hawaii seeks to waive the following sections of the ACA for an additional waiver period of five years:

- Section 1311(b)(1)(B) – State establishment of a SHOP;
- Section 1321(c)(1) – Solely with respect to federal establishment of a SHOP in the state if it elects not to establish a SHOP;
- 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”;
- Sections 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 and one gold level plan through an Exchange, solely with respect to the requirement that a QHP offer a silver and 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.

ACA Section 1332 Waiver Extension Application (Hawaii)

August 12, 2021

Page 2

The five-year extension that Hawaii is seeking would begin January 1, 2022 and run through December 31, 2026. The extension does not change any features of the current waiver plan (except for the extended time period).

Sincerely,



Anne Perreira-Eustaquio  
Director

Attachment: Hawaii Section 1332 Waiver Extension Application

cc: Lina Rashid, Senior Policy Advisor, Center of Consumer Information and Insurance Oversight  
Royden T. Koito, Acting Administrator, Disability Compensation Division

## Section 1332 Waiver Extension Application

### State of Hawaii

1. **A detailed description of the extension request, including the time period for the extension. The state must confirm there are no changes to the current waiver plan for the new waiver period that are otherwise not allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design.**

Hawaii seeks to continue its current waiver plan that waives the following sections of the ACA for an additional period of five years from January 1, 2022 to December 31, 2026:

- Section 1311(b)(1)(B) – State establishment of a SHOP;
- Section 1321(c)(1) – Solely with respect to federal establishment of a SHOP in the state if it elects not to establish a SHOP;
- 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”;
- Sections 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 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.

There are no changes to the current waiver plan for the new waiver period that are otherwise not allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design.

Hawaii wishes to continue to receive Pass-Through Funding as provided for in STC #14 (Pass-Through Funding).

2. **Updated economic or actuarial analyses for the extension period, if the state is aware of changes in state law, the state insurance market, or to the waiver program that are allowable under the STCs and impact waiver assumptions and projections, and that the state has not previously shared with the Departments via its reporting requirements.**

An updated economic or actuarial analysis for the extension period is not being submitted as the state is not aware of changes to state law, the state insurance market, or to the waiver program that are allowable under the STCs and impact waiver assumptions and

projections, and that the state has not previously shared with the Departments via its reporting requirements.

**3. Preliminary evaluation data and analysis of observable outcomes from the existing waiver program, which includes quantitative or qualitative information on why the state believes the program did not meet statutory guardrails.**

Preliminary evaluation data and analysis from the existing waiver program information to show the program met the statutory guardrails follow.

Guardrail 1: Health care that is at least as comprehensive as would be provided absent the waiver.

The State's waiver retained the scope of benefits for the affected program and population, including requiring the provision of the ten Essential Health Benefits ("EHB"), as identified in the state-selected benchmark plan. The waiver did not result in a decrease in the number of individuals with coverage that meets the EHB requirements or in any way diminish benefits currently provided by Medicaid or employers.

All plans sold for employees of small businesses included the ten EHB as well as state-mandated benefits. The Benchmark Plan did not change during the course of the waiver. A detailed summary of the Benchmark Plan can be found at [2014-2016 summary of EHB-Benchmark Plan benefits, limits and prescription drug coverage \(PDF\)](#).

Guardrail 2: Health care that is at least as affordable as would be provided absent the waiver.

The State's proposed waiver met the "affordability" test in that it would not change the cost of health care coverage for state residents on average, nor would it result in any differences in affordability for individuals with large health care spending burdens, for vulnerable groups, or at-risk populations. There would be no pre- and post-waiver differences in net out-of-pocket expenses, deductibles, co-pays, co-insurance, or premium contributions.

The Prepaid Health Care Act (Prepaid) has continued to require employers with one or more employees to provide health insurance coverage to employees working 20 or more hours per week. Prepaid-compliant plans are either "platinum" or "gold" plans and have out-of-pocket limits of not more than \$3000/individual and \$9000/family, therefore capping cost-sharing associated with the coverage. Prepaid has also continued to prohibit employers from recouping more than 1.5% of an employee's gross wages to pay for employee-only insurance premiums. The actuarial value of plans available to employers and the limits on cost-sharing and employee contribution towards the premium render employee costs for coverage and health affordable.

Guardrail 3: Provides coverage to a comparable number of residents of the state as would be provided coverage absent a waiver

The waiver did not reduce the number of Hawaii residents covered, cause changes in coverage for vulnerable populations by coverage category, health status, age, geographic location, or any other demographic characteristic.

The waiver did not make any changes to the marketplace for individuals who continued to have access to all coverage options and any subsidies to which they were entitled in a Federally-Facilitated Marketplace or by purchasing coverage directly.

The average small group enrollment trend reflected growth between 2017 and 2019, indicating the waiver did not adversely affect the number of people covered by small employers.

This trend reversed in 2020 due to the coronavirus pandemic. In the final quarter of 2019, the small group enrollment was 133,776. In 2020, however, enrollment fell each quarter with the final quarter having an enrollment of 102,775. It is likely that the trend was not due to the presence of the waiver, but to the increase in unemployed workers. The coronavirus pandemic caused Hawaii's unemployment rate to increase from 2.1% in December 2019 (see chart below) to 10.3% in December 2020 and upwards as high as 21.9%. This increase in the unemployment rate resulted in fewer employees being entitled to and enrolled in coverage from employers.

[https://data.bls.gov/timeseries/LASST150000000000003?amp%253bdata\\_tool=XGtable&output\\_view=data&include\\_graphs=true](https://data.bls.gov/timeseries/LASST150000000000003?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true)

	Average small group enrollment in quarter 2	Unemployment rate in final month of quarter 2
2017	129,606	2.2%
2018	128,852	2.3%
2019	133,869	2.5%
2020	114,307	14.1%

#### Guardrail 4: Does not increase the federal deficit

Hawaii continued to have employers enroll through the Prepaid marketplace, which has been in place prior to the implementation of the waiver. The Prepaid marketplace did not depend on or interact with the Federally Facilitated Marketplace and therefore did not contribute towards the cost of maintaining the Marketplace.

The State does not foresee the waiver having negative budgetary consequences to the federal government. The Economic Analysis performed by Hawaii State Economist Eugene Tian, Ph.D. for the State's 2016 Waiver Application (see link: [REVISED-Hawaii-1332-Waiver-Proposal -August-10-2016.pdf](#)), which projected the 10-year effects the waiver will have on federal revenues, federal spending, and on operational costs for the 10-year period 2017 to 2026, concluded that the waiver will not have any budgetary consequences to the federal government. This included

no reduction in federal revenues related to payroll or excise taxes, deductions, or user fees; no increase in federal spending; and no state-specific operational considerations to the waiver proposal.

The State has no information of any increased spending or administrative or other expenses to the federal government, or any reduction in federal income, payroll or excise tax, or any other revenue.

**4. Evidence of sufficient authority under state law(s) in order to meet the ACA section 1332(b)(2)(A) requirement for purposes of pursuing the requested extension.**

Act 13, SLH 2016 (attached) granted authority under state law to meet the ACA section 1332(b)(2)(A) requirement for purposes of pursuing this requested extension. This Act is still in effect.

**5. An explanation and evidence of the process to ensure meaningful public input on the extension request, which must include:**

**a. For a state with one or more Federally-recognized Indian tribes within its borders, providing a separate process for meaningful consultation with such tribes, and providing written evidence of the state's compliance with this requirement;**

i. N/A. There are no Federally-recognized Indian tribes in Hawaii.

**b. Publicly posting the submitted LOI on the state's website to ensure that the public is aware that the state is contemplating a waiver extension request;**

i. The State's Letter of Intent was posted on the State of Hawaii-Department of Labor & Industrial Relations-Disability Compensation Division's website on June 23, 2021;

ii. The Letter of Intent was also announced at the Affordable Care Act Waiver Public Forum held on July 29, 2021, where the public was provided the opportunity to submit their written and oral comments. There were no public comments made concerning the LOI at the Forum.

**c. Publicly posting the waiver extension application on the state's website upon its submission of the waiver extension application to the Departments.**

i. The State of Hawaii will be posting this waiver extension application on the state's Disability Compensation Division's website upon submission to the Departments.

ACT 13

S.B. NO. 2775

A Bill for an Act Relating to the Affordable Care Act Section 1332 State Innovation Waiver.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that the State of Hawaii has a bold history as an innovator in ensuring that its residents have access to health care. The Hawaii Prepaid Health Care Act has ensured the availability of employer-sponsored health insurance for workers and their families for more than forty years, meeting or exceeding the goals of the federal Patient Protection and Affordable Care Act of 2010 (Affordable Care Act) for employer sponsored health coverage.

The legislature further finds that the State of Hawaii has taken all necessary steps to comply with the implementation of the health insurance exchange and other insurance reforms required by the Affordable Care Act, but that there remain concerns that portions of the Affordable Care Act could undermine certain gains made by the Hawaii Prepaid Health Care Act.

Under section 1332 of the Affordable Care Act, a state can apply for a state innovation waiver, allowing the State to implement innovative ways to provide access to quality health care. Act 158, Session Laws of Hawaii 2014, established a state innovation waiver task force to develop a health care reform plan that would meet the requirements for obtaining a state innovation waiver in compliance with the Affordable Care Act. Act 184, Session Laws of Hawaii 2015, amended the scope of the task force's responsibilities to facilitate the development of a state innovation waiver application in a timely manner.

The state innovation waiver task force has met regularly since September 2014, holding meetings in accordance with state open meeting requirements, and posting all materials on the Governor's website, satisfying the procedural requirement of the Affordable Care Act. In those meetings, the task force carefully considered all sections of the Affordable Care Act for potential waiver, identify-

ing those provisions that improve coverage and consumer protections and those that contradict, confuse, or weaken employer-coverage mandates in the Hawaii Prepaid Health Care Act.

Once the task force agreed upon the substance of its draft proposal, the task force held a series of seven public hearings on six islands, as required by federal law. These public hearings conformed to state and federal public notice requirements and were attended by a total of one hundred sixty-three community participants. The draft plan and additional information were made publicly available prior to and at the public hearings.

The results of the task force's efforts are contained in its report to the legislature, submitted in December of 2015, recommending three actions for Hawaii's insurance marketplace:

- (1) Maintain access to affordable health insurance coverage for individuals via the state-based exchange utilizing the federal platform;
- (2) Align the Affordable Care Act with the Hawaii Prepaid Health Care Act's requirements for private employers to the extent allowable; and
- (3) Waive the Affordable Care Act Small Business Health Options Program and its requirements for the small business marketplace, including the employee choice provision.

Accordingly, in order to facilitate the development of innovative approaches to insuring the people of Hawaii, the purpose of this Act is to authorize the State to submit a state innovation waiver proposal and to implement such waiver upon approval by the federal government.

**SECTION 2.** The State is authorized to submit a state innovation waiver proposal to the United States Secretaries of Health and Human Services and the Treasury to waive certain provisions of the Affordable Care Act, as provided under section 1332 of the federal act, and upon approval by the Secretaries, to implement the waiver on or after January 1, 2017.

**SECTION 3.** This Act shall take effect upon its approval.

(Approved April 25, 2016.)