



December 10, 2021

VIA ELECTRONIC MAIL: Anne.E.Perreira-Eustaquio@hawaii.gov

Anne Perreira-Eustaquio
Director
Department of Labor and Industrial Relations
State of Hawaii
830 Punchbowl St. #321
Honolulu, HI 96813

Dear Director Perreira-Eustaquio:

Thank you for your August 13, 2021, submission of Hawaii's extension application for a State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (ACA). Hawaii has once again requested a waiver of 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 and associated requirements for employers beginning with plan year 2022. I am pleased to send this letter from the Department of Health and Human Services (HHS), as well as on behalf of the Department of the Treasury (collectively, the Departments).

This letter is to inform you that the Departments, having completed their review of the waiver extension application, approve Hawaii's extension application for its State Innovation Waiver under section 1332 of the ACA (referred to throughout as section 1332 waiver). Enclosed with this letter are the specific terms and conditions (STCs) for Hawaii's State Innovation Waiver. The Departments' approval of Hawaii's extension application is conditioned upon the state's acceptance of these STCs within 21 days of the date of this letter, or by December 31, 2021. This approval is effective for a waiver period of January 1, 2022, through December 31, 2026.

The Departments are granting Hawaii's waiver extension application to waive the requirement for a SHOP to operate in Hawaii and other related requirements relevant to SHOP Exchanges, as described in the state's waiver extension application. Specifically, Hawaii's waiver extension plan seeks to continue to waive the following sections of the ACA and continue implementation of the state's Prepaid Health Care Act and related requirements under the waiver program for an additional five years, for plan years 2022 through 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.

The Departments remain committed to working with state partners to advance health care coverage policies. Through section 1332 waivers, the Departments aim to assist states with developing health insurance markets that expand coverage, lower costs, and ensure that health care truly is a right for all Americans. The Departments have determined that this waiver plan satisfies the guardrails as set forth in section 1332(b)(1)(A)-(D) of the ACA and aligns with Executive Order 13985¹ and Executive Order 14009.² The Departments also have determined that implementation of this waiver plan will lower federal 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. The Departments have considered public comments in making this determination. The Departments’ written responses to comments received during the federal comment period will be available online.³

The enclosed STCs further define the state’s responsibilities with respect to implementation of the waiver and use of pass-through funding during the waiver period and the nature, character, and extent of anticipated federal oversight of the project. The state is encouraged to engage with the Departments early in the process if it is interested in amending or extending its waiver plan. The required information and process may vary based on the complexity of the proposed change or extension. A breach of any of the STCs may lead to termination of Hawaii’s State Innovation Waiver.

Please send your written acceptance and any communications and questions regarding program matters or official correspondence concerning the waiver to stateinnovationwaivers@cms.hhs.gov.

¹ See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government/>

² See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicaid-and-the-affordable-care-act/>

³ https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-.html

Congratulations. We look forward to working with you and your staff. Please do not hesitate to contact us if you have any questions.

Sincerely,



Chiquita Brooks-Lasure

Enclosure

cc: Lily Batchelder, Assistant Secretary for Tax Policy, U.S. Department of the Treasury
The Honorable David Y. Ige, Governor, State of Hawaii
Colin M. Hayashida, Commissioner, Insurance Division, Hawaii Department of
Commerce and Consumer Affairs

DEPARTMENT OF HEALTH & HUMAN SERVICES (HHS)
U.S. DEPARTMENT OF THE TREASURY
PATIENT PROTECTION AND AFFORDABLE CARE ACT SECTION 1332 STATE
INNOVATION WAIVER
SPECIFIC TERMS AND CONDITIONS
TITLE: State of Hawaii — Patient Protection and Affordable Care Act Section 1332 Waiver
Approval
AWARDEE: The State of Hawaii

I. PREFACE

The following are the specific terms and conditions (STCs) for the State of Hawaii’s (“the state”) Patient Protection and Affordable Care Act (ACA)⁴ section 1332 State Innovation Waiver (“the waiver”), which has been approved by the U.S. Department of Health & Human Services (HHS) and the U.S. Department of the Treasury (collectively, the Departments). These STCs govern the operation of the waiver by the state. The STCs set forth, in detail, the state’s responsibilities to the Departments related to the waiver. These STCs are effective beginning January 1, 2022, through December 31, 2026, unless the waiver is extended, otherwise amended, or terminated by the parties in accordance with the applicable process set forth in and provided by these STCs; however, the Departments reserve the right to amend these STCs when the Departments make the annual determination of the pass-through funding amount for plan years 2022 through 2026. The state’s original waiver application to waive certain provisions of the ACA, dated August 10, 2016, and waiver extension application, dated August 13, 2021, are specifically incorporated by reference into these STCs, except with regard to any proposal or text in the original waiver application or waiver extension application that is inconsistent with the Departments’ approval of the waiver or these STCs.

1. ACA Provisions Waived under the Section 1332 State Innovation Waiver (Section 1332 waiver). The following provisions of the ACA are waived solely as they pertain to small employers and/or the operation of a Small Business Health Options Program (SHOP) in Hawaii: ACA § 1311(b)(1)(B), § 1321(c)(1), § 1312(a)(2), § 1312(f)(2)(A), § 1304(b)(4)(D)(i) and (ii), § 1301(a)(1)(C)(ii), and § 1301(a)(2). The Departments’ regulations, policy statements and guidance implementing those provisions with respect to SHOPS and small employers are also waived.

2. Changes in State Law and Technical Changes to the Section 1332 Waiver. The state must inform the Departments of any change in Hawaii state law or regulations that could impact the waiver, including any changes to the requirements under the Hawaii Prepaid Health Care Act (Act) or the Prepaid Health Care Premium Supplementation Fund (Fund), or any technical changes to the Act or the Fund, occurring after the date of this approval letter, within seven days of any such changes. Technical changes are changes, such as changes to the state filing requirements for employers under the Act or the Fund, that do not impact the guardrails or any

⁴ The Patient Protection and Affordable Care Act (Pub. L. 111-148) was enacted on March 23, 2010. The Healthcare and Education Reconciliation Act of 2010 (Pub. L. 111-152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In these STCs, the two statutes are referred to collectively as the “Patient Protection and Affordable Care Act” or “ACA.”

obligations of the state or the Departments. If the Departments determine that the change in state law or regulation or the change to the state waiver plan is not a technical change but instead would be an amendment, the state must immediately suspend implementation of the change and submit an amendment request as set forth in STC 9.

3. Funds to Operate the Hawaii Section 1332 Waiver. The Hawaii section 1332 waiver plan will be funded through federal pass-through funding and state funding from the Fund. The state must ensure sufficient funds, on an annual or other appropriate basis, for the Act and the Fund to operate as described in the state's waiver extension application.

4. Compliance with Federal Non-Discrimination Statutes. The state must comply with all applicable federal statutes relating to non-discrimination. These include, but are not limited to, the Americans with Disabilities Act of 1990, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, titles I and II of the Genetic Information Nondiscrimination Act of 2008, and section 1557 of the ACA.

5. Compliance with Applicable Federal Laws. Per 31 C.F.R. § 33.120(a) and 45 C.F.R. § 155.1320(a), the state must comply with all applicable federal laws and regulations, unless a law or regulation has been expressly waived. The Departments' State Innovation Waiver authority is limited to requirements described in section 1332(a)(2) of the ACA. Further, section 1332(c) of the ACA states that while the Secretaries of the Departments (Secretaries) have broad discretion to determine the scope of a waiver, no federal laws or requirements may be waived that are not within the Secretaries' authority. *See* 77 Fed. Reg. 11700, 11711 (February 27, 2012). Therefore, for example, section 1332 of the ACA does not grant the Departments authority to waive any provision of the Employee Retirement Income Security Act of 1974. The state must also comply with requirements of the Cash Management Improvement Act (CMIA).

6. Changes to Applicable Federal Laws. The Departments reserve the right to amend, suspend, or terminate the waiver, these STCs, or the pass-through funding amount as needed to reflect changes to applicable federal laws or changes of an operational nature without requiring the state to submit a new waiver proposal. The Departments will notify the state at least 30 days in advance of the expected implementation date of the amended STCs, if applicable, to allow the state to discuss the changes necessary to ensure compliance with law, regulation, and policy, to allow the state adequate time to come into compliance with state and federal regulatory requirements (including rate review and consumer notice requirements), and to provide comment, if applicable. Changes will be considered in force upon the Departments' issuance of amended STCs. The state must accept the changes in writing within 30 days of the Departments' issuance of the amended STCs for the waiver to continue to be in effect. The state must, within the applicable timeframes, come into compliance with any changes in federal law or regulations affecting section 1332 waivers, unless the provision being changed has been expressly waived for the waiver period. If any of the waived provision(s) are eliminated under federal law, the Departments would re-evaluate the waiver to see if it still meets all of the section 1332 waiver requirements. If the Departments determine that the waiver needs to be suspended or terminated as a result of a change to federal law, the Departments will provide further guidance to the state as to that process.

7. Finding of Non-Compliance. The Departments will review and, when appropriate, investigate documented complaints that the state is failing to materially comply with requirements specified in the approved waiver and these STCs. In addition, the Departments will promptly share with the state any complaint that they may receive and will notify the state of any applicable monitoring and compliance issues.

8. State Request for Suspension, Withdrawal, or Termination of a Waiver. The state may only request to suspend, withdraw, or terminate all or portions of a waiver plan consistent with the following requirements:

- (a) Request for suspension, withdrawal, or termination: If the state wishes the Departments to suspend, withdraw, or terminate all or any portion(s) of the waiver, the state must submit a request to the Departments in writing specifying: the reasons for the requested suspension, withdrawal, or termination; the effective date of the requested suspension, withdrawal or termination; and the proposed phase-out plan (with the summary of comments received, as described below). The state must submit its request and draft phase-out plan to the Departments no less than six (6) months before the proposed effective date of the waiver's suspension, withdrawal, or termination. Prior to submitting the request and draft phase-out plan to the Departments, the state must publish on its website the draft phase-out plan for a 30-day public comment period and conduct Federal tribal consultation as applicable. The state must include with its request and proposed phase-out plan a summary of each public comment received, the state's response to the comment and whether or how the state incorporated measures into a revised phase-out plan to address the comment.
- (b) Departments' approval: The state must obtain the Departments' approval of the phase-out plan prior to the implementation of the phase-out activities. Implementation of phase-out activities must begin no sooner than 14 calendar days after the Departments' approval of the phase-out plan, unless otherwise directed by the Departments.
- (c) Recovery of unused funding: Any unused pass-through funding will be recovered. The state will comply with all necessary steps to facilitate the recovery within a prompt timeframe.

9. State Request for Amendment.

- (a) Definition: For purposes of these STCs and per 31 C.F.R. § 33.130(a) and 45 C.F.R. § 155.1330(a), an amendment is a change to a section 1332 waiver plan that is not otherwise allowable under these STCs, a change that could impact any of the section 1332 statutory guardrails, or a change to the program design for an approved waiver. Such potential changes include, but are not limited to, changes to eligibility, coverage, benefits, premiums, out-of-pocket spending, and cost sharing.
- (b) Amendment Request Submission Process: Consistent with 31 C.F.R. § 33.130 and 45 C.F.R. § 155.1330, to amend a waiver the state must comply with the following requirements:

- (1) The state must submit a letter in electronic format to the Departments to notify them in writing of its intent to request an amendment to its approved section 1332 waiver plan(s). The state must include a detailed description of all of the intended change(s), including the proposed implementation date(s), in its letter of intent. The Departments encourage the state to submit its letter of intent at least 15 months prior to the section 1332 waiver amendment's proposed implementation date and to engage with the Departments early in its development of a potential waiver amendment. The state may want to submit this letter of intent more than 15 months prior to the section 1332 waiver amendment's proposed implementation date, depending on the complexity of the amendment request and the timeline for implementation, among other factors.
- (2) The Departments will review the state's letter of intent requesting changes to its approved section 1332 waiver plan. Within approximately 30 days of the Departments' receipt of the state's letter of intent, the Departments will respond to the state and confirm whether the change requested is a section 1332 waiver amendment, as well as identify the information the state needs to submit in its waiver amendment request. This written response will also include whether or not the proposed section 1332 waiver amendment(s) would be subject to any additional or different requirements outlined in STC 9(c)(7).
 - a. For example, depending on the complexity of the section 1332 amendment request, scope of changes from the approved waiver plan, operational/technical changes, or implementation considerations, the Departments may impose requirements similar to those specified in 31 C.F.R § 33.108(f) and 45 C.F.R. § 155.1308(f) for new section 1332 waiver applications.
- (3) The state should generally plan to submit its waiver amendment request in writing in electronic format, as outlined in STC 9(c), no later than 9 months prior to the waiver amendment's proposed implementation date in order to allow for sufficient time for review of the waiver amendment request. Similar to the regulations at 31 C.F.R. § 33.108(b) and 45 C.F.R. § 155.1308(b) for new section 1332 waiver applications, the state must submit the section 1332 waiver amendment request sufficiently in advance of the requested waiver amendment implementation date, particularly when the waiver plan or requested amendment could impact premium rates, to allow for an appropriate review and implementation timeframe. Depending on the complexity of the section 1332 amendment request, the state may want to submit the amendment request earlier than 9 months prior to implementation. In developing the implementation timeframe for its section 1332 waiver amendment request, the state must maintain uninterrupted operations of the Exchange in the state and provide adequate notice to affected stakeholders and issuers of health insurance plans that would be (or may be) affected by the amendment to take necessary action based on approval of the section 1332 waiver amendment request.
- (4) The Departments reserve the right to deny or withhold approval of a state section 1332 waiver amendment request based on non-compliance with these STCs or any additional direction and information requests from the Departments, including

a failure by the state to submit required reports and other deliverables in a timely fashion.

- (5) The state is not authorized to implement any aspect of the proposed amendment without prior approval from the Secretaries.

(c) Content of Amendment Application: All amendment applications are subject to approval at the discretion of the Secretaries in accordance with section 1332 of the ACA. The state must furnish such information and analysis regarding the proposed waiver amendment that is necessary to permit the Departments to evaluate the request. A section 1332 waiver amendment request must include the following:

- (1) A detailed description of the requested amendment, including the time period for the proposed amended waiver, impact on the guardrails, the scope of the proposed amendment to the waiver plan—including whether the state seeks to waive any new provisions and the rationale for the waiver—and related changes to the section 1332 waiver program elements as applicable, including sufficient supporting documentation;
- (2) An explanation and evidence of the process used by the state to ensure meaningful public input on the proposed section 1332 waiver amendment request. The state must conduct the state public notice process that is specified for new applications at 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312. It may be permissible for a state to use its annual public forum required under 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c) for the dual purpose of soliciting public input on a proposed section 1332 waiver amendment request and on the progress of its approved waiver plan;⁵
- (3) Evidence of sufficient authority under state law(s) in order to meet the requirement in section 1332(b)(2)(A) of the ACA for purposes of pursuing the section 1332 waiver amendment request;
- (4) An implementation plan with operational details (if appropriate) to demonstrate that the section 1332 waiver would maintain uninterrupted operations of the Exchange in the state, and provision of adequate notice for stakeholders and issuers of health insurance plans that would be (or may be) affected by the proposed amendment to take necessary action based on approval of the section 1332 waiver amendment request;
- (5) An updated actuarial and/or economic analysis demonstrating how the section 1332 waiver, as amended, will meet the section 1332 statutory guardrails. Such analysis must identify the “with waiver” impact of the requested amendment on the statutory guardrails. Such analysis must include a “with waiver” and “without waiver” status on both a summary and detailed level through the current approval period using data from recent experience, as well as a summary of and detailed projections of the change in the “with waiver” scenario;
- (6) An explanation of the estimated impact, if any, of the section 1332 waiver amendment on pass-through funding, as well as any new proposed uses for pass-through funding if applicable; and

⁵ In the event of an emergent situation, the state may seek to use the flexibilities provided at 31 C.F.R. § 33.118(a) and 45 C.F.R. § 155.1318(a), in part, to modify the public participation requirements.

- (7) Any further requested information and/or analysis that is determined necessary by the Departments to evaluate the section 1332 waiver amendment request.

10. State Request for Waiver Extension.

- (a) Definition: For purposes of these STCs and per 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, an extension is an extension of an approved waiver under the existing waiver terms.

The waiver extension request and approval process is separate from the waiver amendment request and approval process described in STC 9, with separate timelines and requirements. An extension request can only include an extension of the existing approved waiver terms, not other changes to the existing approved waiver plan. If a state also seeks to make substantive changes to its approved section 1332 waiver plan along with seeking an extension, the Departments will treat those changes as amendments and the requirements of STC 9 will also apply.

- (b) Extension Request Submission Process: Consistent with 31 C.F.R. § 33.132 and 45 C.F.R. § 155.1332, to extend the waiver the state must comply with the following requirements:
- (1) The state must inform the Departments if the state will apply for an extension of its approved section 1332 waiver at least one year prior to the waiver's end date. The state must submit a letter of intent in electronic format to the Departments to notify them in writing of its intent to request an extension of its approved section 1332 waiver plan. The state must include a detailed description of the requested extension period in the letter of intent. The Departments will then review the state's letter of intent request. Within approximately 30 days of the Departments' receipt of the letter of intent, the Departments will respond to the state and confirm whether the extension request will be considered an extension request and, if applicable, whether the request includes changes that would be considered an amendment request subject to the separate process and requirements set forth in STC 9. The Departments' response will also identify the information the state needs to submit in its section 1332 waiver extension request.
 - (2) The state must submit its section 1332 waiver extension request in writing in electronic format, consistent with the format and manner requirements applicable to initial waiver applications under 31 C.F.R. § 33.108(a) and 45 C.F.R. § 155.1308(a).
 - (3) An extension request shall be deemed granted unless the Secretaries, within 90 days after the date of the state's submission of a complete section 1332 waiver extension request, either deny such request in writing or inform the state in writing with respect to any additional information needed to make a final determination with respect to the request.
 - (4) The Departments reserve the right to deny a state section 1332 waiver extension request based on non-compliance with these STCs or any additional direction and information requests from the Departments, including a failure by the state to submit required reports and other deliverables in a timely fashion.

(c) Content of Extension Application: All extension applications are subject to approval at the discretion of the Secretaries in accordance with section 1332 of the ACA. The state must furnish information and analysis regarding the proposed waiver extension that is necessary to permit the Departments to evaluate the request. In addition to the periodic reports required by 31 C.F.R. § 33.124 and 45 C.F.R. § 155.1324, the Departments may require additional data and information to be submitted to review the extension request in accordance with 31 C.F.R. § 33.120(f)(2) and 45 C.F.R. § 155.1320(f)(2). A section 1332 waiver extension request may be required to include the following information:

- (1) Updated economic or actuarial analyses for the requested extension period in a format and manner specified by the Departments;
- (2) Preliminary evaluation data and analysis from the existing section 1332 waiver program;
- (3) Evidence of sufficient authority under state law(s) to meet the requirement in section 1332(b)(2)(A) of the ACA for purposes of pursuing the section 1332 waiver extension request;
- (4) An explanation of the process followed by the state to ensure meaningful public input on the proposed section 1332 waiver extension request at the state level. It may be permissible for the state to use its annual public forum under 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c) for the dual purpose of soliciting public input on a proposed section 1332 waiver extension request and on the progress of its approved waiver plan;⁶ and
- (5) Other information as requested by the Departments that is necessary to reach a decision on the section 1332 waiver extension request.

The Departments will identify the information the state needs to submit as part of its section 1332 waiver extension request in its response to the state's letter of intent.

(d) Temporary Extension of Waivers: The Departments may extend an existing approved section 1332 waiver program on a temporary basis for an additional year while a waiver extension request is under review, without regard to the date when the extension application was submitted.

(e) End of Waiver Period: If the state does not submit an extension request before the end of the waiver period consistent with STC 10(b)(1), the Departments will provide guidance on wind-down of the state's section 1332 waiver program.

11. Reporting. The state must submit quarterly and annual reports as specified in 31 C.F.R. § 33.124 and 45 C.F.R. § 155.1324.

Annual Report: The state must submit a draft annual report to the Departments within 90 days after the end of the first waiver year and each subsequent year that the waiver is in effect. The state must publish the draft annual report on the state's public website within 30 days of submission to the Departments. Within 60 days of receipt of comments from the Departments on

⁶ In the event of an emergent situation, the state may seek to use the flexibilities provided at 31 C.F.R. § 33.118(a) and 45 C.F.R. § 155.1318(a), in part, to modify the public participation requirements.

the report, the state must submit to the Departments the final annual report for the waiver year, summary of the comments, and all public comments received as part of the post award forum process. The state must publish the final annual report on the state's public website within 30 days of approval by the Departments.

Quarterly and Other Reports: Under 31 C.F.R. § 33.120(b), 31 C.F.R. § 33.124(a), 45 C.F.R. § 155.1320(b), and 45 C.F.R. § 155.1324(a), the state must conduct periodic reviews related to the implementation of the waiver. The state must report on the operation of the waiver quarterly including, but not limited to, reports of any ongoing operational challenges and plans for and results of associated corrective actions, no later than 60 days following the end of each calendar quarter. The state can submit its annual report in lieu of its fourth quarter report.

Report Contents: The annual and quarterly reports must include items (1)-(4) and (6) below. In addition, each year's first quarter report and annual report must also include item (5) below.

- (1) Technical changes to the Hawaii approved section 1332 waiver program.
- (2) Notification of changes to state law or regulations that may impact the state's section 1332 waiver plan as specified in STC 2.
- (3) Reporting of:
 - a. Federal pass-through funding spent on payments to eligible employers under the Fund;
 - b. Federal pass-through funding spent on outreach and enrollment;
 - c. Federal pass-through funding spent on other purposes (e.g., operational expenses) including a breakdown of how funds were spent by activity;
 - d. The unspent balance of federal pass-through funding for the reporting year, if applicable;
 - e. The amount of state funding appropriated for the Fund;
 - f. The number of employers receiving funds through the Fund or through other uses of federal pass-through funding; and
 - g. The number of employees provided health coverage by employers receiving funds through the Fund or through other uses of federal pass-through funding.
- (4) A summary of the post award public forum as part of the quarterly report for the quarter in which the forum was held and the annual report in accordance with 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), including all public comments received at such forum regarding the progress of the state's approved section 1332 waiver and action taken in response to such comments.
- (5) Metrics to assist evaluation of the waiver's compliance with the statutory requirements in section 1332(b)(1)(A) through (D) of the ACA:
 - a. Projected and actual small group enrollment;
 - b. Projected and actual individual plan enrollment through the Marketplace;
 - c. Projected and actual individual plan enrollment off Marketplace;

- d. Projected and actual average small group premium (total premiums paid for the quarter divided by enrollment in (a) above); and
- e. Projected and actual average employee out-of-pocket cost (premium contribution and cost-sharing) in the small group market.

(6) Other information the Departments determine is necessary to calculate pass-through amounts or to evaluate the waiver.

12. Post Award Forum. Per 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), within six months of the waiver's effective date and annually thereafter, the state will afford the public an opportunity to provide meaningful comment on the progress of the waiver.⁷ The state is required to publish the date, time, and location of the public forum in a prominent location on the state's public web site at least 30 days prior to the date of the planned public forum. Per 31 C.F.R. § 33.120(c) and 45 C.F.R. § 155.1320(c), the state must also include a summary of this forum as part of the quarterly report for the quarter in which the forum was held and the annual report as required under 31 C.F.R. § 33.124 and 45 C.F.R. § 155.1324 and as specified in STC 11.

13. Monitoring Calls. The state must participate in monitoring calls with the Departments that are deemed necessary by the Departments. The purpose of these monitoring calls is to discuss any significant actual or anticipated developments affecting the waiver. Areas to be addressed include the impact on the section 1332 statutory guardrails and state legislative or policy changes. The Departments will update the state on any federal policies and issues that may affect any aspect of the waiver. The state and the Departments will jointly develop the agenda for the calls. It is anticipated that these calls will occur at least semi-annually.

14. Federal Evaluation. The Departments will evaluate the waiver using federal data, state reporting, and the application itself to ensure that the Secretaries can exercise appropriate oversight of the approved waiver. Per 31 C.F.R. § 33.120(f) and 45 C.F.R. § 155.1320(f), if requested by the Departments, the state must fully cooperate with the Departments or an independent evaluator selected by the Departments to undertake an independent evaluation of any component of the waiver. As part of this required cooperation, the state must submit all requested data and information to the Departments or the independent evaluator. The Departments may charge the state for evaluation costs to the federal government.

15. Pass-through Funding. Under section 1332(a)(3) of the ACA, the state will be entitled to funding based on the amount of Small Business Health Care Tax Credits that would have been provided to small employers under section 45R of the Internal Revenue Code absent the waiver but will not be provided under the state's approved section 1332 waiver, reduced, if necessary, to ensure deficit neutrality as required by section 1332(b)(1)(D) of the ACA. The state will receive pass-through funding for the purpose of implementing the state plan under the approved section 1332 waiver. The estimated amount of pass-through funding for plan years 2022 through 2026 will be calculated by the Departments annually (per section 1332(a)(3) of the ACA) and reported

⁷ In the event of an emergent situation, the state may request to host the post award forum virtually pursuant to the flexibilities provided at 31 C.F.R. § 33.120(c)(2) and 45 C.F.R. § 155.1320(c)(2) with regard to post award public notice procedures in emergent situations, as long as the other applicable requirements for meaningful public input are met.

to the state on the earliest date practicable. Pass-through amounts are subject to a final administrative determination by the Department of the Treasury prior to payment, and will be made available no later than April of the applicable calendar year.

The pass-through funds cannot be obligated by the state prior to the effective date for the approved section 1332 waiver. The state agrees to use the full amount of pass-through funding for purposes of implementing the state's approved section 1332 waiver, including for purposes of covering health care expenses in the state by making payments to employers determined eligible for the Premium Supplementation Program under the criteria outlined in § 393-45 of the Hawaii Revised Statutes and to support outreach and education activities designed to inform consumers about benefits available under the state's approved section 1332 waiver. Moreover, to the extent pass-through funding exceeds the amount necessary for Hawaii to implement the waiver in a given plan year, the remaining funds must be carried forward and used for purposes of implementing the state's approved section 1332 waiver in a subsequent year.

If the waiver is not extended, the Departments will promptly recover unused pass-through funds following the end of the approved waiver period, December 31, 2026. The state must comply with all necessary steps to facilitate the recovery of such amounts by the Departments within a prompt timeframe.

16. The Departments' Right to Amend, Suspend, or Terminate. Consistent with 31 C.F.R. § 33.120(d) and 45 C.F.R. § 155.1320(d), the Departments reserve the right to amend, suspend, or terminate the waiver (in whole or in part) at any time before the date of expiration if the Departments determine that the state has materially failed to comply with these STCs, or if the state fails to meet the specific statutory requirements or "guardrails" related to coverage, affordability, comprehensiveness, or deficit neutrality.

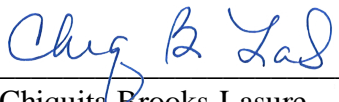
- (a) The Departments will promptly notify the state in writing of the determination and the reasons for the amendment, suspension, or termination, together with the effective date.
- (b) In the event that all of or a portion of the waiver is suspended or terminated by the Departments, federal funding available after the effective date of the suspension or termination will be limited to normal closeout costs associated with an orderly suspension or termination including service costs during any approved transition period and administrative costs of transitioning participants, as described in 31 C.F.R. § 33.120(e) and 45 C.F.R. § 155.1320(e).
- (c) The Departments will recover unused pass-through funding. The state must comply with all necessary steps to facilitate the recovery within a prompt timeframe.

17. Communication of Section 1332 Waiver Continuation. The state must promptly inform all employers who may be eligible for participation in the SHOP that the waiver has been extended through plan year 2026 and that, as a result, no certifications will be granted for plan years 2022 through 2026, and accordingly that the federal Small Business Health Care Tax Credit will not be available for coverage provided through the SHOP for plan years 2022 through

2026. The state must also inform eligible employers about the eligibility requirements and application process for the Fund. Within 30 days of waiver approval, the state will share with the Departments a plan and information about actions taken to communicate to employers, and for employers to communicate with employees, about the waiver.

Anne Perreira-Eustaquio
Director
Department of Labor and Industrial Relations
State of Hawaii

Date: _____



Chiquita Brooks-Lasure
Administrator
Center for Medicare & Medicaid Services

Date: 12/9/2021

Lily Batchelder
Assistant Secretary for Tax Policy
U.S. Department of the Treasury

Date: _____