



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

*Administrator*  
Washington, DC 20201

**DEC 30 2016**

The Honorable David Y. Ige  
Governor, State of Hawai'i  
Executive Chambers  
415 S. Beretania Street  
Honolulu, Hawai'i 96813

Dear Governor Ige:

Thank you for your August 10, 2016, submission of Hawai'i's application for a State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (Pub. L. 111-148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), as amended (Affordable Care Act or ACA). Per our letter dated September 26, 2016, the Department of Health and Human Services (HHS) and the Department of the Treasury (collectively, the Departments) determined that your application was complete. We have subsequently reviewed your application for approval.

This letter is to inform you that the Departments, having completed a review of the application, approve in part Hawai'i's State Innovation Waiver under section 1332 of the ACA, as described below, and subject to the state's acceptance of the Specific Terms and Conditions (STCs) that are enclosed with this letter. This approval is effective for January 1, 2017 through December 31, 2021.

Hawai'i's application sought waiver of the ACA requirement that a Small Business Health Options Program (SHOP) operate in Hawai'i 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 are waived in Hawai'i, together with Departmental regulations, policy statements, and guidance implementing those provisions 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 Hawai'i if the state elects not to establish a SHOP;
- Section 1312(a)(2). Employee choice of qualified health plans (QHPs) 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 level plan and one gold level plan through an Exchange, solely

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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 deny Hawai'i's request to waive section 1311(f)(3)(B) to seek flexibility to permit state agencies other than the State Medicaid Agency to have a role in an Exchange, if applicable. Given that a Federally-facilitated Marketplace operates in Hawai'i, this provision will not be a part of the waiver.

The Departments' approval of Hawai'i's State Innovation Waiver under section 1332 of the ACA is conditioned upon Hawai'i's agreement to and compliance with the enclosed STCs. The enclosed STCs further define the state's responsibilities with respect to implementation of the waivers and use of pass-through funding during the waiver period, and the nature, character, and extent of anticipated federal involvement in the project. The award is also subject to our receipt of your written acknowledgement of the award and acceptance of the STCs within 30 days of the date of this letter. A breach of the STCs may lead to termination of Hawai'i's State Innovation Waiver.

Please send your written acceptance and any communications and questions regarding program matters or official correspondence concerning the waiver to Lina Rashid at [Lina.Rashid@cms.hhs.gov](mailto:Lina.Rashid@cms.hhs.gov) or [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

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

Sincerely,



Andrew M. Slavitt  
Acting Administrator

Enclosure

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
U.S. DEPARTMENT OF THE TREASURY  
AFFORDABLE CARE ACT SECTION 1332 STATE INNOVATION WAIVER SPECIFIC  
TERMS AND CONDITIONS  
TITLE: State of Hawaii — Affordable Care Act Section 1332 Waiver Proposal  
AWARDEE: The State of Hawai'i

I. PREFACE

The following are the Specific Terms and Conditions (STCs) for the State of Hawai'i's (the State) Affordable Care Act Section 1332 State Innovation Waiver ("the waiver"), which has been approved by the U.S. Department of Health and Human Services and the U.S. Department of the Treasury (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 during the term of the waiver, which is January 1, 2017 through December 31, 2021. Accordingly, these STCs are effective beginning January 1, 2017, and will terminate on December 31, 2021, unless the waiver is extended as provided by these STCs. Hawai'i's Proposal to Waive Certain Provisions of the Patient Protection & Affordable Care Act – Revised, dated August 10, 2016, is specifically incorporated by reference into these STCs, except with regard to any proposal to waive requirements under section 1311(f)(3)(B) of the ACA or any proposals or text otherwise inconsistent with the Departments' approval of the waiver or these STCs.

**1. ACA Provisions Waived Under Section 1332 State Innovation Waiver.** The following provisions in the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended (Affordable Care Act or ACA), are waived solely as they pertain to small employers and/or the operation of a Small Business Health Options Program (SHOP) in Hawai'i, §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.** The State must inform the Departments if there is a change in Hawai'i State law that would impact the waiver, including any changes to the requirements under the Hawai'i Prepaid Health Care Act or the Prepaid Health Care Premium Supplementation Fund. The State must report any changes in State law within 30 days of such changes to the Departments after January 1, 2017.

**3. Transition of Plan Year 2016 ACA SHOP Plans.** The State must promptly inform all employers who have received a Certification of Eligibility for participation in the Hawai'i Small Business Health Options Program (SHOP) that no certifications will be granted for plans years beginning on or after January 1, 2017, and accordingly that the federal Small Business Health Care Tax Credit will not be available for coverage provided through the Hawai'i SHOP for plan years beginning after December 31, 2016 through the duration of the waiver. Employers participating in the SHOP must also be informed that the federal Small Business Health Care Tax Credit will be available for SHOP plan years that began in calendar year 2016 and end in calendar year 2017. The State must also inform eligible employers about the eligibility requirements and application process for the Prepaid Health Care Premium Supplementation

Fund. Within 30 days of waiver approval, the State will share with the Departments a plan and information about actions taken to ensure that employers and employees currently participating in the SHOP in Hawai'i transition smoothly under the waiver as necessary, and to communicate with eligible employers who might have participated in the SHOP about the waiver and the implications for the Small Business Health Care Tax Credit.

**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, and section 1557 of the Affordable Care Act.

**5. Compliance with Applicable Federal Laws.** Per 31 CFR 33.120(a) and 45 CFR 155.1320(a), the State must comply with all applicable Federal laws, regulation, policy statements and Departmental guidance unless a law or regulation has been specifically waived. A State must, within the timeframes specified in law, regulation, policy or guidance, come into compliance with any changes in Federal law, regulation, or policy affecting section 1332 waivers, unless the provision being changed has been expressly waived.

**6. Changes to Applicable Federal Laws.** The Departments reserve the right to amend the STCs as needed to reflect changes to applicable Federal laws and/or changes of an operational nature without requiring the State to submit a new waiver. The Departments will notify the State 30 days in advance of the expected approval date of the amended STCs to allow the State to provide comment. Changes will be considered in force upon the Departments' issuance of the amended STCs. The State must accept the changes in writing.

**7. Periodic Reviews and Finding of Non-Compliance.** Under 31 CFR 33.120(b) and 45 CFR 155.1320(b), a State must conduct periodic reviews related to the implementation of the waiver. The Departments will review, and when appropriate investigate, documented complaints that a State is failing to materially comply with requirements specified in the terms and conditions of the waiver. In addition, the Departments will promptly share with the State any complaint that they have received and 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 suspend or request withdrawal of 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 or terminate the waiver, or withdraw a portion of the waiver, the state must submit a request to the Departments in writing, specifying the reason(s) 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 comment summary 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 transition and phase-out plan for a 30-day public comment period and conduct tribal consultation. 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 transition and phase-out plan to address the comment.

b) The State must obtain the Departments' approval of the transition and phase-out plan prior to the implementation of the phase-out activities. Implementation of phase-out activities must be no sooner than 14 days after the Departments' approval of the phase-out plan.

c) Unused pass-through funding will be returned to the Treasury.

**9. Waiver Extension Request.** The State must inform the Departments as to whether the State will apply for continuation of the waiver one year prior to the waiver's end date. The Departments and the State will engage in further discussions to develop and define next steps for transition/phase out or continuation of the waiver.

**10. Reporting:** The State will submit quarterly and annual reports as specified in 31 CFR 33.124 and 45 CFR 155.1324 which include:

- o The progress of the section 1332 waiver;
- o Data sufficient to show compliance with section 1332(b)(1)(A) through (D) of the Affordable Care Act;
- o A summary of the annual post-award public forum, held in accordance with §155.1320(c), including all public comments received at such forum regarding the progress of the section 1332 waiver and action taken in response to such concerns or comments.
- o Other information consistent with the State's approved terms and conditions.

*Quarterly Reports:* The State must submit quarterly reports to the Departments no later than 60 days following the end of each calendar quarter. The intent of these reports is to present the State's analysis and the status of the various operational areas.

*Annual Report:* The State must submit a draft annual report to the Departments within 90 days after the end of the first year, and each subsequent year, the waiver is in effect. The State will 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, the State must submit to the Departments the final annual report for the year. The State must publish the final annual report on the State's public Web site within 30 days of approval by the Departments.

The quarterly and annual reports must include the following:

- 1) Metrics to assist evaluation of the waiver's compliance with the statutory requirements in section 1302(b)(1):
  - 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)
- e. Projected and actual average employee out-of-pocket cost (premium contribution and cost-sharing) in the small group market
- 2) Reporting of federal pass-through funding spent on:
  - a. Payments to eligible employers under the Prepaid Health Care Premium Supplementation Fund or otherwise
  - b. Outreach and enrollment; and
  - c. Other purposes as applicable, including a breakdown of how funds were spent by activity.
- 3) No less than 30 days advance notification of changes to eligibility under the Prepaid Health Care Act or other program changes (e.g. capping enrollment).
- 4) Notification of changes to State law that may impact the waiver.

The annual report must also include:

- 1) The amount of State funding appropriated for the Prepaid Health Care Premium Supplementation Fund.
- 2) The number of employers receiving funds through the Prepaid Health Care Premium Supplementation program or through other uses of pass-through funding.
- 3) The number of employees provided health coverage by employers receiving funds through the Prepaid Health Care Premium Supplementation program or through other uses of pass-through funding.

**11. Post Award Forum.** Per 31 CFR 33.120(c) and 45 CFR 155.1320(c), within six months of the waiver's effective date, and annually thereafter, the State will afford the public with an opportunity to provide meaningful comment on the progress of the waiver. 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. The State must also include a summary of this forum as part of the quarterly and annual reporting requirements under 31 CFR 33.124 and 45 CFR 155.1324 as mentioned in term and condition #10.

**12. Monitoring Calls.** The State must participate in monitoring calls with the Departments that are deemed necessary by the Departments. The purpose of these calls is to discuss any significant actual or anticipated developments affecting the waiver. Areas to be addressed include, but are not limited to: impact on the regulatory criteria discussed above 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.

**13. Federal evaluation.** Per 31 CFR 33.120(f) and 45 CFR 155.1320(f), if requested by the Departments, a 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.

**14. 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 waiver. The Departments have evaluated the estimates in the application for a pass-through amount for the period of the waiver. The State will receive pass-through funding from the Department of the Treasury, paid on a quarterly basis, for the purpose of implementing the State plan under the waiver. The amount of pass-through funding due under the statute for the 2017 calendar year is \$459,169. The Departments estimate the total pass-through amount for the 2017 to 2021 waiver period will be \$2,795,766. The amount of pass-through funding for calendar years 2018 through 2021 will be calculated by the Departments annually (per ACA section 1332(a)(3)), and reported to the State not later than September 1 of the preceding year. The first payment will be made in October 2017, and will include funds for the first three quarters of 2017. Thereafter pass-through amounts will be by the third business day after the quarter ends.

The pass-through funds cannot be obligated by the State prior to the January 1, 2017 waiver effective date. The State agrees to use the full amount of pass-through funding for purposes of implementing the State's plan as approved by the Departments, 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 section 393-45 of the Hawai'i Revised Statutes. Moreover, to the extent pass-through funding exceeds that amount necessary for Hawai'i to make payments under the Premium Supplementation Program, the remaining funds must be used for purposes of implementing the State's plan under the waiver, including but not limited to supporting outreach and education activities designed to inform consumers about benefits available under the plan.

If the waiver is not renewed, unused pass-through funds will be returned to the Treasury promptly following the end of the approved waiver period, December 31, 2021.

**15. CMS and Treasury Right to Amend, Withdraw, Terminate or Suspend.** Under 31 CFR 33.120(d) and 45 CFR 155.1320(d), the Departments reserve the right to amend, withdraw, terminate, or suspend 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 suspension or termination, together with the effective date.

b) In the event that all or a portion of the waiver is terminated, suspended by the Departments, or if all or a portion of the waiver is withdrawn, Federal funding available after the effective date of the termination, suspension, or withdrawal will be limited to normal closeout costs associated with an orderly termination, suspension, or withdrawal, including service costs during any approved transition period, and administrative costs of transitioning participants, as described in 31 CFR 33.120(e) and 45 CFR 155.1320(e).

c) Unused pass-through funding will be returned to the Treasury.



The State of Hawai'i

Date: DEC 30 2016



Andrew M. Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services

Date: JAN - 3 2017



Mark J. Mazur  
Assistant Secretary for Tax Policy  
U.S. Department of the Treasury

Date: January 3, 2017