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April 29, 2021

Jeffrey Grant, Acting Director  
Center of Consumer Information and Insurance Oversight  
Centers for Medicare & Medicaid Services  
(Via Email: [Jeffrey.Grant1@cms.hhs.gov](mailto:Jeffrey.Grant1@cms.hhs.gov))

Mark J. Mazur  
Deputy Assistant Secretary for Tax Policy  
Office of Tax Policy  
U.S. Department of Treasury  
(Via Email: [Mark.Mazur2@treasury.gov](mailto:Mark.Mazur2@treasury.gov))

Dear Messrs. Grant and Mazur:

Re: ACA Section 1332 Waiver Extension; Letter of Intent (Hawaii)

The State of Hawaii is pleased to submit this Letter of Intent to apply for a five-year extension of our Section 1332 State Innovation Waiver. Currently, the following Sections of the Affordable Care Act (ACA) are waived through December 31, 2021.

- 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 (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 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 to be recognized as QHPs in the small group market.

Equal Opportunity Employer/Program  
Auxiliary aids and services are available upon request to individuals with disabilities.  
TDD/TTY Dial 711 then ask for (808) 586-8866.

Hawaii 1332 Waiver Letter of Intent  
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We are not proposing any changes to our waiver. The waiver will continue to adhere to the guardrails established by Section 1332, as well as principles laid out in guidance from the Centers of Medicare and Medicaid Services (CMS), and will not affect other provisions of the ACA.

Hawaii's current waiver is intended to preserve the employee protections provided by the state's Prepaid Health Care Act (Prepaid). Prepaid sets a higher bar for employer-sponsored insurance than does the ACA. Its coverage, benefits and costs to employees apply to all regardless of income, age, race and ethnic group, or any other demographic characteristic. Hawaii's waiver does not diminish access to meaningful, affordable insurance for any resident and does not change the Medicaid program, individual exchange, or direct purchase.

Thank you for considering our application. We look forward to engaging with you in the coming months.

Sincerely,

A handwritten signature in black ink, appearing to read "Anne Eustaquio". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Anne Eustaquio  
Director

DEPARTMENT OF HEALTH & HUMAN SERVICES  
Centers for Medicare & Medicaid Services  
Center for Consumer Information and Insurance Oversight  
200 Independence Avenue SW  
Washington, DC 20201



May 27, 2021

**VIA ELECTRONIC MAIL:** [Anne.E.Perreira-Eustaquio@hawaii.gov](mailto:Anne.E.Perreira-Eustaquio@hawaii.gov)

Anne Perreira-Eustaquio  
Director  
Department of Labor and Industrial Relations  
State of Hawai'i  
830 Punchbowl Street, Room 321  
Honolulu, HI 96813

Dear Director Perreira-Eustaquio:

Thank you for your April 29, 2021 letter of intent (LOI) to apply for an extension of Hawai'i's State Innovation Waiver (section 1332 waiver) under Section 1332 of the Affordable Care Act (ACA). I am sending this letter from the Center for Consumer Information and Insurance Oversight (CCIIO) within the Centers for Medicare & Medicaid Services (CMS) under the Department of Health & Human Services (HHS), as well as on behalf of the Department of the Treasury (collectively, the Departments).

The state has informed the Departments eight months prior to the waiver's end date of the state's intent to apply for continuation of the waiver. While at least one year's advance notice is required by the specific terms and conditions (STCs) governing Hawai'i's waiver,<sup>1</sup> the Departments confirm that Hawai'i's anticipated section 1332 waiver application, as described below, may be submitted and will be reviewed as a waiver extension request. Note that, upon submission of the extension application, the Departments will make a preliminary determination as to whether the application is complete within approximately 30 days, which will be followed by a review period of up to 90 days. The waiver extension may not be implemented unless and until it is approved. The requirements for the state's waiver extension application are enclosed with this letter. If the extension is approved, the Departments may determine the waiver extension will be subject to additional or revised requirements, which will be provided in the extension STCs.

Hawai'i's currently approved waiver of the ACA requirement that a Small Business Health Options Program (SHOP) operate in Hawai'i 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

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<sup>1</sup> See STC 9. The applicable STCs are available here: <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Hawaii-1332-Letter-final-and-signed.pdf>

respect to SHOPS and small employers are also waived. As described in the LOI, Hawai'i 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 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.

Given that Hawai'i's existing waiver expires December 31, 2021, the five-year extension that Hawai'i is seeking would begin January 1, 2022 and run through December 31, 2026.

A waiver extension is an extension of the existing waiver terms and does not propose any changes to the existing waiver that are not otherwise allowable under the state's STCs, or that could impact any of the section 1332 statutory guardrails or program design. Given that Hawai'i has indicated it does not intend to change any features of its waiver plan (except for the extended time period), Hawai'i may proceed with submitting an application for a waiver extension. The Departments encourage states to submit their waiver extension applications sufficiently in advance of the requested waiver effective dates. For Hawai'i, this would ideally have been no later than the first quarter of 2021. As a result, the Departments encourage the state to submit its waiver extension application as soon as possible.

The enclosed document further outlines the application requirements for the state's waiver extension. Once the Departments receive the state's waiver extension application, the Departments will conduct a preliminary review to determine if the application is complete or will identify if elements are missing from the application by written notice. Please note, the state is not authorized to implement any aspect of the proposed waiver extension without prior written approval by the Departments. This letter does not constitute any pre-determination or intent to approve the state's proposed extension request.

Please send your acknowledgement of this letter 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), Michelle Koltov at [Michelle.Koltov@cms.hhs.gov](mailto:Michelle.Koltov@cms.hhs.gov), or [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov).

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Grant". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Jeffrey Grant  
Acting Director  
Center for Consumer Information & Insurance Oversight (CCIIO)  
Centers for Medicare & Medicaid Services (CMS)

Cc: Mark Mazur, Deputy Assistant Secretary for Tax Policy, U.S. Department of the Treasury  
The Honorable David Y. Ige, Governor, State of Hawai'i  
Colin M. Hayashida, Commissioner, Insurance Division, Hawai'i Department of Commerce and Consumer Affairs

Enclosure

## Specific Requirements for Hawai'i's Waiver Extension Application

The Departments will conduct a preliminary review of Hawai'i's waiver extension application and make a preliminary determination as to whether it is complete within approximately 30 days after it is submitted to [stateinnovationwaivers@cms.hhs.gov](mailto:stateinnovationwaivers@cms.hhs.gov). If the Departments determine that the application is complete, the application will be made public through the Department of Health and Human Services website, and a 30-day federal public comment period will commence while the application is under review. If the Departments determine that the application is not complete, the Departments will send the state a written notice of the elements missing from the application. Hawai'i's waiver extension application must include the following:

- (1) A detailed description of the extension request, including the desired 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;
- (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;
- (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 or did not meet the statutory guardrails;
- (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;
- (5) An explanation and evidence of the process to ensure meaningful public input on the extension request,<sup>2</sup> 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;
  - 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; and
  - c. Publicly posting the waiver extension application on the state's website upon its submission of the waiver extension application to the Departments.

The state does not have to meet all of the public notice requirements specified for new waiver applications in 31 C.F.R. § 33.112 and 45 C.F.R. § 155.1312 (e.g., holding two public hearings and providing a 30-day comment period) to fulfill

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<sup>2</sup> Recognizing that barriers may exist for states during the public health emergency for COVID-19, please see additional flexibilities available: Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency; Interim Final Rule, 85 FR 71142 at 71176. Also see 31 C.F.R. § 33.118 and 45 C.F.R. § 155.1318.

paragraph (5) above. However, the state must ensure and demonstrate there was an opportunity for meaningful public input on the extension request. For example, the state may choose to hold one public hearing or provide an amended or shorter comment period, or some combination of both. If the state holds one public hearing, it can use its annual public forum for the dual purposes of gathering input on the existing waiver as well as the extension application request.

- (6) The Departments may request additional information and/or analysis in order to evaluate and reach a decision on the requested extension.