

Hawai'i Receives Approval for First State Innovation (Section 1332) Waiver

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The federal **Department of Health and Human Services** and **Department of Treasury** (the Departments) [agreed](#) that certain small employer health insurance coverage provisions of the **Affordable Care Act (ACA)** would be waived for the state of **Hawai'i**, beginning with January 1, 2017. The waiver was authorized pursuant to **Section 1332** of the ACA, which allows states to apply for a *State Innovation Waiver*.

Hawai'i's waiver is the first of its kind.

Section 1332 [State Innovation Waivers](#) offer states flexibility to waive key insurance coverage provisions of the ACA, including the requirement for individuals and employers to maintain insurance coverage for themselves or their employees (the individual and employer mandates), requirements related to the scope of available benefits provided through insurance (essential health benefits), requirements for creation of a marketplace for purchasing health insurance coverage (exchanges), requirements for the credentialing of health plans offered through the exchanges (QHPs), and limits on deductibles and cost sharing for QHPs. State Innovation Waivers also allow states to request waivers of cost sharing reductions and tax credits available for individuals and businesses pursuant to the ACA; the amount of these reductions and tax credits are available to the state for the operation of a replacement program.

Under its [approved application](#), Hawai'i will cease operation of the Small Business Health Options Program (SHOP) required by the ACA effective January 1, 2017, for a 5 year period which may be extended. Instead, Hawai'i will operate the business insurance program, known as "Prepaid," that has been in place since 1974. Under Hawai's Prepaid Health Care Act, employers are required to provide insurance to employees that meet requirements established by state law. To receive approval from the Departments for the waiver, and as a condition of receiving federal funds, Hawai'i demonstrated that its program met or exceeded the scope of coverage that would have been available under the ACA, provided coverage and cost sharing protection that are at least as affordable as available under the ACA, and provided coverage to at least as many residents as under the ACA. Hawai'i will receive quarterly payments from the federal government for the operation of

this program, equal to the estimated amount of tax credits that would have been provided to small employers in Hawai'i pursuant to the SHOP program.

The awarding of the section 1332 waiver to Hawai'i represents the first State Innovation Waiver to modify requirements of the ACA. Section 1332 was developed as part of the ACA to allow states, such as Hawai'i, to maintain coverage programs that predated the ACA or to allow states to experiment with coverage programs that are more robust or that differ from the form required by the ACA. Currently, [at least 9 states](#) have enacted laws authorizing state officials to analyze or submit an application for a section 1332 waiver. As discussions about the ACA are taken up by the new Congress and new administration, section 1332 waivers will continue to influence how states and stakeholders evaluate their options.

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