

New York: State Innovation Waiver under Section 1332 of the ACA

March 1, 2024

The U.S. Department of Health and Human Services and the U.S. Department of the Treasury (collectively, “the Departments”) approved New York’s application for a State Innovation Waiver under the Affordable Care Act (ACA) (referred to as a “section 1332 waiver”) for five years, from April 2024 through December (PY) 2028. New York’s section 1332 waiver application sought to create a new coverage program, the Essential Plan (EP) Expansion, that generally mirrors the State’s Basic Health Program (BHP), known as the EP,¹ with expanded eligibility under its section 1332 waiver to certain residents with estimated household incomes up to 250% of the Federal Poverty Level (FPL). The EP Expansion will also include some individuals with incomes below 250% of FPL who would otherwise be enrolled in Medicaid coverage or in a state-funded health insurance program absent the waiver. This first-of-its-kind, innovative waiver aims to improve access to affordable coverage, provide additional benefits, help advance health equity, and smooth the affordability “cliff” for individuals transitioning from Medicaid during the unwinding period.²

Actuarial analyses performed on behalf of New York and submitted as part of its section 1332 waiver application and addendums projected that under the waiver and relative to the without-waiver baseline, more individuals will have coverage, affordability will be improved for certain residents with estimated household incomes between 200 to 250% of FPL, coverage will remain the same for current EP enrollees, and statewide premiums in the individual market will not increase due to the waiver. New York has projected that, once fully implemented, over 100,000 individuals will be covered under the waiver, including approximately 20,500 who would have otherwise been uninsured absent the waiver. Further, New York has projected that individuals with estimated household incomes 200 to 250% of FPL, who are newly eligible for the EP Expansion (and previously enrolled in individual market coverage) will, on average, save \$4,700 each year on premiums and cost-sharing, during the five-year waiver period.

As a result of New York’s section 1332 waiver, the State will receive federal pass-through funding. Specifically, New York will receive funding based on the premium tax credit (PTC) savings associated with the elimination of spending on PTC in the individual market for certain individuals with estimated household incomes 200 to 250% of FPL and based on the elimination of federal spending on BHP payments to the extent the associated savings correspond to PTC for individuals who would have otherwise enrolled in qualified health plans (QHP) offered on the

¹New York is currently operating a BHP under section 1331 of the ACA. On November 16, 2023, CMS published rulemaking (88 FR 78818) that updates the applicable BHP regulations to establish a framework for states to suspend their BHPs (e.g. BHP must be replaced with a coverage program that is at least comparable). New York submitted a request to suspend its existing BHP, contingent on approval of the section 1332 waiver application, for the duration of the waiver period and seamlessly transition that population to coverage under its new section 1332 waiver. New York’s BHP is referred to as the Essential Plan (EP). The State refers to its new coverage program under the section 1332 waiver as “the with-waiver EP,” and the waiver program is referred to as the “EP Expansion” for purposes of this document. For the avoidance of doubt, the EP Expansion is being established pursuant to a section 1332 waiver and is therefore not a BHP subject to section 1331 of the ACA or its implementing regulations.

² The Medicaid continuous enrollment condition ended on March 31, 2023. On April 1, 2023, states resumed regular Medicaid eligibility and enrollment operations, including renewals and coverage terminations.

State's Exchange.³ This pass-through funding will be used to fund the waiver's EP Expansion, including premiums for EP Expansion enrollees, as well as services and supports provided under the EP Expansion. Further, it will also support an Insurer Reimbursement Implementation Plan (IRIP) established under the State's section 1332 waiver to prevent premium increases for individual market enrollees due to the impact of individuals with estimated household income 200-250% of FPL moving to the EP Expansion under the waiver.⁴ In addition to maintaining stable premiums in the individual market, this waiver will also support stability with respect to plan participation for the individual market.

The Departments have determined that New York's section 1332 waiver plan meets the requirements outlined in sections 1332(b)(1)(A)-(D) of the ACA. Specifically, the section 1332 waiver is projected:

- to provide coverage at least as comprehensive as coverage provided without the waiver;
- to provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided without the waiver;
- to provide coverage to at least a comparable number of people as would be provided without the waiver; and
- to not increase the federal deficit.

New York's State Innovation Waiver under section 1332 of the ACA is approved subject to New York accepting specific terms and conditions (STCs).

Summary of New York's Application for a State Innovation Waiver under Section 1332 of the ACA

New York's application for a State Innovation Waiver under section 1332 of the ACA sought to waive section 36B of the Internal Revenue Code to the extent it would otherwise provide that a month is a "coverage month" (and therefore a PTC may be allowed for that month) if an individual residing in New York is under age 65 and has in effect a determination by the Exchange that their estimated household income is at or below 250% of FPL, as well as section 1402 of the ACA to the extent it would otherwise make New York residents under age 65 and with estimated household incomes at or below 250% of FPL eligible for cost-sharing reductions, for the purposes of enrolling these individuals in the State's new coverage program, the EP Expansion. The State's application also sought to waive the single risk pool requirement in the individual market under section 1312(c)(1) of the ACA to the extent it would otherwise prohibit including individuals with estimated household incomes 200 to 250% of FPL in the individual market single risk pool when establishing the market-wide index rate for the purposes described in the State's section 1332 waiver application.

As a result of the Departments' approval of New York's section 1332 waiver application, consumers are projected to benefit in a number of ways, including: increased access to coverage; improved affordability of coverage; and access to additional health benefits under the EP Expansion, like adult dental and vision coverage. The Departments have determined that New

³ To the extent the waiver imposes additional net costs on the federal government, this pass-through funding would be reduced to ensure deficit neutrality.

⁴ Insurers will be provided a reimbursement for any lost revenue due to the section 1332 waiver in lieu of passing along increased costs to consumers in the form of higher premiums.

York's waiver is projected to provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as would be provided without the waiver. Under the section 1332 waiver, individuals with estimated household incomes 200 to 250% of FPL (who are currently ineligible for the EP but who will be eligible for the EP Expansion coverage under the waiver) will have no premiums or deductible and have limited cost-sharing.⁵ These individuals will be eligible for and be enrolled in EP Expansion coverage under the waiver that will be defined at 91.9% actuarial value (AV) using the AV calculator compared to a weighted AV of 72.2% for a QHP for these consumers in the without-waiver baseline. The EP Expansion will include individuals with incomes below 250% of FPL who would otherwise be enrolled in Medicaid coverage or in a state-funded health insurance program absent the waiver; these enrollees will experience cost-sharing and coverage under the EP Expansion that are equivalent to those under Medicaid. In addition, New York projects that individuals who are currently enrolled in New York's EP and those remaining in the individual market will not experience a change in affordability or comprehensiveness under the waiver for each year of the waiver. New York projects that under the waiver combined enrollment for the individual market and EP expansion will be 2.4% higher in PY 2024 and 3.9% higher in PY 2028 than they would be without the waiver. New York has estimated that the number of individuals with coverage will similarly be higher under the waiver than in the without-waiver baseline in each year of the waiver period. These projections were certified by independent actuaries and reviewed by the Departments.

Because there would be no PTC spending on individuals under age 65 and with estimated household income up to 250% of FPL (including individuals with estimated household incomes up to 200% of FPL), the federal government anticipates that it will spend less on PTC under the waiver than it would absent the waiver. As such, New York will receive pass-through funding associated with its waiver of section 36B of the Internal Revenue Code for individuals with estimated household incomes up to 250% of FPL to support its state waiver plan. This pass-through funding is based on the amount of PTC that would have been provided on behalf of New York residents in the without-waiver baseline but will not be provided under the waiver. The total amount passed through to the State will be reduced, if necessary, to ensure deficit neutrality. The State estimates that the waiver will produce net federal savings of \$9.8 billion in 2024 and \$66.3 billion over the five-year waiver period (which reflects the expiration of the enhanced PTC schedule under the Inflation Reduction Act after 2025). Some of these savings will be provided to the State as pass-through funding that will cover a portion of state costs for the EP Expansion, IRIP, and programs established under the waiver to improve the comprehensiveness and affordability of the EP Expansion through, for example, initiatives addressing social determinants of health and behavioral health services.

Section 1332: State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing residents with access to high-quality, affordable health insurance. These waivers provide states with the opportunity to develop strategies that best suit their individual needs. Through innovative thinking tailored to specific state circumstances, states

⁵ The EP Expansion has a tiered cost-sharing structure. Maximum out-of-pocket costs are: \$200 for prescriptions only for enrollees 100 to 150% of the FPL; \$360 for enrollees 150-200% FPL; and \$2,000 for enrollees over 200% FPL.

can lower premiums for consumers, improve market stability, and increase consumer choice.

In order for a section 1332 waiver to be approved, the Departments must determine that the waiver meets statutory guardrails to provide coverage that is at least as comprehensive as the coverage provided without the waiver; provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as without the waiver; provide coverage to at least a comparable number of residents as without the waiver; and not increase the federal deficit.

State Innovation Waivers under section 1332 of the ACA have been available since January 1, 2017; are approved for up to five-year periods; and can be extended. The Departments welcome the opportunity to work with states on section 1332 waivers. States interested in applying for a section 1332 waiver can find application tools and resources, including an application checklist and application templates, on the CMS website [here](#).

The section 1332 waiver approval letter and STCs for New York can be found [here](#)