



*Administrator*  
Washington, DC 20201

March 1, 2024

James V. McDonald  
Commissioner  
New York State Department of Health  
Empire State Plaza  
Corning Tower  
Albany, NY 12237

Dear Commissioner McDonald:

Thank you for your May 12, 2023 submission; August 23, 2023 addendum; November 14, 2023 addendum; and December 18, 2023 addendum for New York's application for a State Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (ACA) (also referred to as a "section 1332 waiver"). New York (also referred to as "the State") has requested a waiver for April 2024 through plan year 2028 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,<sup>1</sup> with expanded eligibility under its section 1332 waiver to certain residents with estimated household income up to 250% of the Federal Poverty Level (FPL) beginning in April 2024. 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 application, approve New York's section 1332 waiver application. The State's final approved waiver application refers to the May 12, 2023 application and the December 18, 2023 addendum (which also encompasses the August and November addenda). Described below are the specific terms and conditions (STCs) of this waiver. The Departments' approval of the waiver is conditioned upon the State's acceptance of these STCs by March 31, 2024. This approval is effective for a waiver period of April 1, 2024, through December 31, 2028.

The Departments are granting New York's request to waive section 36B of the Internal Revenue Code (IRC) to the extent it would otherwise provide that a month is a "coverage month" (and therefore a premium tax credit (PTC) may be allowed for that month) if an individual residing in

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<sup>1</sup>New York is currently operating a BHP under section 1331 of the ACA. On November 16, 2023, CMS published rulemaking (88 FR 52262) that updates the 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 waiver application, for the duration of the waiver period given the seamless transition of 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.

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 income 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 (or "waiver"), as described in the State's final waiver application. The Departments are also granting New York's request, per its final waiver application, 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 income of 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 waiver application.

The Departments remain committed to working with state partners to advance health 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 affordable health coverage is available for their residents. The Departments have determined that this waiver plan satisfies the statutory guardrails (as set forth in sections 1332(b)(1)(A)-(D) of the ACA), and also have determined that implementation of the waiver is projected to increase total enrollment and affordability for lower-income individuals who become newly eligible for EP Expansion coverage offered under the waiver.

The Departments note that the State's waiver application and the Departments' approval of the waiver application reflect state and federal law at the time of approval. Moving forward, the State is responsible, under STC 2, to inform the Departments of any change in state law or regulation that could affect the waiver. Additionally, if there is a change in state or federal law, the Departments may, consistent with the federal regulations and the STCs, request additional information from the State as part of their responsibility to conduct oversight and monitoring to ensure that approved section 1332 waivers continue to meet the statutory guardrails.

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 waiver. STCs 11 and 15 both contemplate that the Departments may require periodic reporting of information in addition to the items specifically enumerated therein. Given the novel nature of New York's waiver, it is likely that periodic reporting of additional information will be required. 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 New York's section 1332 waiver.

#### **Departments' Determination**

Based on consideration of the analysis and information submitted by the State as part of its waiver application (including the August, November addendum, and December 2023 addenda), along with the State's responses to questions from the Departments during the review period and consideration of the Departments' experience with existing section 1332 waivers and other health programs and public comments, the Departments have determined that New York's

waiver plan meets the statutory guardrail requirements in sections 1332(b)(1)(A)-(D) of the ACA.

First, the Departments have determined that the State's section 1332 waiver is projected to provide coverage that is at least as comprehensive as coverage provided without the waiver. More specifically, the waiver plan will not alter the essential health benefits for individuals currently enrolled in the State's EP or for other consumers enrolled in qualified health plans (QHPs) through the individual market. Under the State's waiver, these individuals will be eligible to enroll in the EP Expansion program and will continue to have essential health benefits under the new coverage. Furthermore, individuals with estimated household income of 200 to 250% of FPL (who are currently ineligible for coverage under the State's EP but who will be eligible for coverage under the waiver) will be eligible for more comprehensive coverage under the waiver, as coverage under the waiver will include adult dental and vision benefits. Additionally, 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, will continue to receive the same benefits in the EP Expansion as they receive today.

The Departments have determined that the State's waiver is also 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 waiver, the State has projected that individuals with estimated household income of 200 to 250% of FPL who are currently enrolled in QHPs will experience an average annual savings of \$4,700 (\$2,300 in premium savings and \$2,400 in out-of-pocket spending savings). In PY 2026 and beyond, when the PTC expansion under the Inflation Reduction Act expires, the State projects that the EP Expansion will further increase affordability for those with estimated household income of 200 to 250% of FPL relative to QHP coverage with PTC absent the waiver. Further, the State projects the waiver will not reduce the affordability of coverage for individuals who would be enrolled in New York's EP absent the waiver or, due to the inclusion of the Insurer Reimbursement Implementation Plan (IRIP) in the State's waiver plan, those who remain in the individual market. Similarly, individuals who would otherwise be enrolled in Medicaid or state-funded health insurance absent the waiver will experience no change in affordability. The Departments have therefore determined that the waiver meets the affordability guardrail.

The Departments have determined that the State's waiver satisfies the coverage guardrail, meeting the statutory requirement that the waiver is projected to provide coverage to at least a comparable number of state residents as would be provided without the waiver. Under the waiver and compared to the baseline, New York has estimated that the number of individuals with coverage will be higher by 20,526 individuals. New York has similarly estimated that enrollment in the EP Expansion and individual market will be higher under the waiver than compared to the baseline in each year thereafter (by 2.4% for PY 2024, 3.9% for PY 2025, 4.0% for PY 2026, 3.9% for PY 2027, and 3.9% for PY 2028). By providing EP Expansion coverage under the section 1332 waiver to individuals who were eligible for coverage under the State's BHP before it was suspended and to individuals with estimated household income of 200 to 250% of FPL, including those previously eligible for coverage under a state-funded health insurance program the waiver is projected to enable more New Yorkers to enroll in affordable, comprehensive health insurance, thereby expanding comprehensive coverage to individuals who

were previously uninsured. The Departments also expect the waiver to increase coverage for vulnerable or underserved groups. The Departments have also determined that the coverage under New York's EP Expansion is comparable to minimum essential coverage (MEC),<sup>2</sup> and thus falls under the definition of coverage for the purposes of the section 1332 coverage guardrail analysis.<sup>3</sup> We note that New York can still meet the coverage guardrail even if the actual impact on the number of insured individuals is smaller than estimated, since a section 1332 waiver is not required to increase coverage, but rather, to provide coverage to a comparable number of people as would receive it absent the waiver.

Finally, the Departments have determined that the waiver is not projected to increase the federal deficit. Compared to the baseline, the Departments project a net decrease in federal spending on PTC in the individual market in PY 2024 and over the five-year waiver period because there would be no PTC spending under the waiver on individuals under age 65 with estimated household income of 200 to 250% of FPL. Additionally, the waiver will eliminate federal spending on the State's existing BHP throughout the waiver period and thus yield federal savings. The waiver will also reduce federal Medicaid spending associated with individuals who become pregnant and who would have transitioned from the BHP to Medicaid (due to their pregnancy) absent the waiver but who will be enrolled in the EP Expansion under the waiver. The Departments do not project any significant new federal costs as a result of the waiver. Any such costs that have been identified, such as any lost Employer Shared Responsibility Payment receipts under section 4980H of the IRC (as individuals with estimated household income of 200 to 250% of FPL who might have received PTC and thereby triggered a payment absent the waiver would no longer trigger a payment under the waiver) are orders of magnitude lower than the PTC, BHP, and federal Medicaid<sup>4</sup> savings yielded by the waiver and would be subtracted from the amount passed through to the State, as necessary, to ensure deficit neutrality. The same would be true of any other federal costs that might be identified. Although the aggregate federal savings yielded by the waiver would be expected to decrease in PYs 2026 through 2028, when the PTC expansion under the Inflation Reduction Act expires, the Departments nevertheless project that the federal savings attributable to the waiver will continue to more than offset any federal costs attributable to the waiver in those years.

The Departments have also determined that implementation of this waiver proposal will yield net federal PTC savings associated with its waiver of section 36B of the IRC for certain individuals with estimated household income up to 250% of FPL. Under section 1332(a)(3) of the ACA, these PTC savings will be passed through to the State to be used for implementation of the waiver plan. In addition, the waiver of PTC for individuals with estimated household income up to 250% of FPL (and thereby also for individuals with estimated household income up to 200%

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<sup>2</sup> The coverage under New York's EP Expansion mirrors the coverage offered under the State's BHP, which the State has requested to suspend as part of the transition to its waiver plan. See *supra* note 1. The HHS Secretary has recognized BHP coverage as MEC. See the definition of MEC in 42 CFR 600.5 and 26 CFR 1.5000A-2(f).

<sup>3</sup> See Patient Protection and Affordable Care Act; Updating Payment Parameters and Improving Health Insurance Markets for 2022 and Beyond; Final Rule, 86 FR 53412 at 53469 (Sept. 27, 2021).

<sup>4</sup> Federal Medicaid savings are due to pregnant individuals who would have transferred to Medicaid without the waiver remaining enrolled in the EP Expansion under the waiver. This is projected to slightly decrease Medicaid enrollment and related spending, including the federal match. In addition, there are possible, albeit small, decreases in federal spending on emergency care for some people who may newly enroll in health coverage through the EP Expansion.

of FPL) will eliminate the federal BHP payment to the State, and the Departments will pass through these BHP savings to the extent they correspond to PTC that the Departments project would otherwise have been paid on behalf of individuals enrolled in QHPs offered on the State's Exchange, not to exceed the full amount of annual BHP savings.

### **Consideration of Public Comments**

To increase transparency, section 1332(a)(4)(B) of the ACA requires the establishment of a process for public notice and comment on a state's section 1332 waiver application that is sufficient to ensure a meaningful level of public input. This includes a state-level public comment period (generally occurring prior to application submission), as well as a federal public comment period after the state's application is received and deemed complete by the Secretary of Health and Human Services and the Secretary of the Treasury (collectively, "the Secretaries").<sup>5</sup>

Prior to submitting its application to the Departments on May 12, 2023, the New York State Department of Health conducted a state public comment period on its proposed waiver application, which was open from February 9, 2023, through March 11, 2023. The State conducted four public hearings—two on the initial application on February 22 and 23, 2023, and two additional public hearings on the August and November addenda on November 17 and 28, 2023.

The Departments conducted three federal comments periods, during which they received a total of 49 comments, the majority of which generally supported the waiver proposal. The first, 30-day federal comment period on the initial waiver application was held from June 6, 2023, through July 5, 2023. During this period, the Departments received a total of 17 comments, the majority of which generally supported the State's waiver proposal. A second federal comment period was conducted from August 23, 2023, through August 30, 2023, on the August 2023 addendum to the waiver application detailing the IRIP. The Departments received seven public comments during this additional federal comment period, of which five were generally in support of the IRIP; one was opposed to the IRIP; and one was generally opposed to the waiver but did not comment on the IRIP. A third federal public comment period was held from November 17 through December 2, 2023, on the November 2023 addendum, which updated the EP Expansion implementation date to April 2024, eliminated premiums for households with estimated income of 200-250% FPL, established an option to allow EP Expansion members who become pregnant to remain enrolled in the EP Expansion unless they opt to transition to Medicaid, and responded to public comments on the IRIP. During this third public comment period, the Departments received 25 comments. Of these, nine comments supported the waiver, 16 made recommendations for amending the waiver plan, and none were opposed to the waiver. 20 of the commenters urged the State to expand the EP Expansion to cover more immigrants. Across the three comment periods, 35 of the 49 comments received urged New York to expand coverage to more immigrants through this waiver.

The Departments shared all comments received during all federal comment periods with the State for its review and consideration and have also posted them on the CMS section 1332

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<sup>5</sup> Requirements for the state comment period are codified at 31 CFR 33.112(a)(1) and 45 CFR 155.1312(a)(1), while federal public comment period requirements are codified at 31 CFR 33.116 and 45 CFR 155.1316.

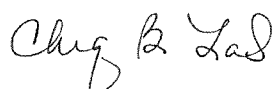
waiver website.<sup>6</sup> The Departments also sent New York a series of questions throughout the review period of the waiver application. These questions, and the responses from New York, are also posted on the CMS section 1332 waiver website.<sup>7</sup> A summary of major themes raised in the public comments and the Departments' responses are provided in Appendix A.

### Next Steps

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

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: Aviva Aron-Dine, Acting Assistant Secretary, Tax Policy, U.S. Department of the Treasury  
The Honorable Kathy Hochul, Governor, State of New York  
Megan E. Baldwin, Acting Executive Deputy Commissioner, New York State Department of Health  
Danielle Holahan, Executive Director, NY State of Health  
Sonia Sekhar, Deputy Director, NY State of Health

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<sup>6</sup> [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section\\_1332\\_State\\_Innovation\\_Waivers-](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-)

<sup>7</sup> Ibid.

Appendix A: Summary and Responses to Major Themes  
Raised in Public Comments Submitted During the Federal Comment Periods

A total of 49 comments were received across three federal public comment periods; of these, 35 were from organizations and 14 were from individuals. 11 organizations submitted comments during more than one comment period. Most comments across all public comment periods (27) supported the waiver plan.

During the first federal public comment period held from June 6, 2023, through July 5, 2023, 17 comments were received. As described below, 13 of those comments generally supported the waiver proposal whereas four of those comments generally opposed the waiver.

In response to public comments received, New York submitted an addendum to its waiver application detailing the Insurer Reimbursement Implementation Plan (IRIP) on August 23, 2023, and the Departments held an additional federal public comment period. During the second federal public comment period held from August 23, 2023, through August 30, 2023, seven comments were received. As described below, five of those comments generally supported the additional proposal regarding the IRIP, one generally opposed it, and one generally opposed the waiver but did not comment on the IRIP.

On September 28, 2023, in response to the State's request, the Departments paused review of the waiver application after the State informed the Departments of its plan to submit an additional waiver addendum. The additional addendum was submitted on November 14, 2023, reflecting the delayed April 1, 2024, implementation date, elimination of all premiums from the EP Expansion, the ability of pregnant EP Expansion enrollees to remain in the EP Expansion unless they opt to transition to Medicaid, and the State's responses to comments on the IRIP proposal.

The Departments resumed review of the waiver application, including the November addendum, on November 14. In response to the November 2023 addendum, the Departments conducted a third federal public comment period from November 17, 2023, through December 2, 2023, during which 25 comments were received. Of these comments, nine supported the waiver, 16 made recommendations for amending the waiver plan such as expanding coverage further, and none were opposed to the waiver. No commenters expressed concerns regarding the amended waiver proposal's compliance with the 1332 guardrails.

On December 8, 2023, the Departments paused their review again after the State informed the Departments that the State would submit an updated waiver plan to include DACA recipients in the EP Expansion in response to public comments. On December 18, 2023, the State submitted an updated addendum to newly include DACA recipients in the EP Expansion, and provided additional details on the elimination of the \$15 premium, IRIP methodology, and the pregnancy choice option, and the Departments resumed review of the waiver application.

References to the State's "final waiver application" reflect the State's May 12, 2023 application and the December 18, 2023 addendum (which also encompasses the August and November

addenda).<sup>1</sup>

### Guardrails

#### *Public Comments:*

Commenters in support of New York's proposed waiver expressed that the Departments should approve the waiver application as it satisfies the statutory guardrails. Commenters noted that the waiver will improve affordability by substantially lowering health care costs for individuals each year and reduce the number of uninsured by expanding coverage for certain low-income New Yorkers. Finally, these commenters also noted the waiver will contribute to New York's overall efforts to improve health equity in the State.

#### *Departments' Response:*

The Departments appreciate commenters' support for the waiver application and agree that New York's waiver plan would improve affordability and coverage for New Yorkers. After review of the State's analysis and public comments, along with consideration of the Departments' experience with existing section 1332 waivers and other health programs, the Departments have determined that New York's waiver plan satisfies the statutory guardrails set forth in sections 1332(b)(1)(A)-(D) of the ACA. In evaluating the statutory guardrails, the Departments considered the impact of the entire waiver on each guardrail compared to the baseline. An explanation of the Departments' determination that the New York waiver plan meets the guardrails is included in the letter to the State.

### Expanding Health Coverage Access to All New Yorkers, Regardless of Immigration Status

#### *Public Comments:*

Most commenters (35 of 49 total comments received) urged the Departments to review the waiver to determine if there is a path forward to allow the State to cover eligible individuals with estimated household income of up to 250% of FPL, regardless of immigration status. Commenters pointed out that allowing states to pursue innovative programs to expand health insurance coverage to all state residents, regardless of immigration status, via a section 1332 waiver is not new, as Colorado and Washington have done so through their approved section 1332 waivers.

Several commenters stated that under New York's waiver application, many undocumented adults ages 19-64 would still be ineligible for affordable coverage options and must rely on Emergency Medicaid (which does not cover organ transplants or rehabilitation services), safety net providers, and direct access programs to receive services and cover out-of-pocket costs.<sup>2</sup> Some commenters noted that barriers to accessing life-saving organ transplants and the costs of ongoing dialysis for kidney patients could be mitigated by further expanding eligibility under New York's waiver plan to include this cohort. Some commenters specifically requested that the State include DACA recipients (some of whom are currently covered in a state-funded health insurance program) in the EP Expansion.

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<sup>1</sup> Per the State's application, implementation of the EP Expansion will begin in April 2024, with the exception of the expansion to Deferred Action for Child Arrivals recipients, which will become effective in August 2024.

<sup>2</sup> For example, one commenter noted that in New York City alone, the New York City Mayor's Office of Immigrant Affairs estimates that there are nearly 476,000 immigrants who are undocumented, of whom 46% are uninsured and largely ineligible for coverage. See <https://www.nyc.gov/assets/immigrants/downloads/pdf/MOIA-Annual-Report-for-2020.pdf>.



Additionally, these commenters noted that expanding coverage under the waiver to all individuals with estimated household income up to 250% of FPL regardless of immigration status would result in reduced Emergency Medicaid costs and that covering DACA recipients under the EP Expansion would result in state savings related to the state-funded coverage currently available for some DACA recipients. These commenters explained that lacking coverage impedes a person's ability to access primary care and specialty services, including screenings and diagnostics linking patients to timely treatment and intervention. These commenters also stated that expanding coverage to more immigrants under the waiver would save the federal and state government over \$1 billion in annual Emergency Medicaid costs when uninsured immigrant patients seek emergency care at hospitals. Additionally, one commenter requested further clarification on whether New York would be able to receive section 1332 waiver pass-through funding associated with decreased Emergency Medicaid usage. Some commenters estimated that the federal portion of Emergency Medicaid spending has exceeded \$400 million annually for individuals ages 19-64 who could otherwise be covered by the State's section 1332 waiver if eligibility were expanded to include this cohort.

Another commenter noted that in the case of New York City (NYC), if eligibility under the State's waiver plan were expanded to include this cohort, these individuals would transition from being recipients of Emergency Medicaid and members of NYC Care (a health care access program offered by NYC's public health system) to enrollees in coverage under the waiver, NYC would be able to recapture an estimated \$200 million annually in local contributions to Emergency Medicaid and lower NYC Care program costs. This commenter also stated that uncompensated care costs for providers would decrease (\$1,174 per person covered each year), and the additional revenue would be helpful for essential safety net providers. Some commenters (10) specifically noted the personal and financial impact of ongoing dialysis for undocumented immigrants who are unable to access kidney transplants under Emergency Medicaid coverage.

#### *Departments' Response:*

The Departments acknowledge comments highlighting the benefits of expanding eligibility for the EP Expansion. New York's final waiver application did not include a proposal to expand coverage to individuals with estimated household income of up to 250% of FPL regardless of immigration status. However, in response to comments received during the state and federal comment periods, New York updated its waiver plan to include certain DACA recipients in households with estimated income up to 250% FPL in the EP Expansion. We note that, even without this expansion, the waiver would increase health coverage among the currently uninsured in New York, allowing individuals to experience improved health outcomes and provide a benefit to the local and national economy. The Departments note that there is no prohibition on using section 1332 waiver pass-through funding to fund state affordability programs (e.g., state subsidies) that are part of a section 1332 waiver plan, so long as the waiver plan meets the section 1332 statutory guardrails and other applicable requirements.<sup>3,4</sup> The Departments also note that a state cannot receive any federal Emergency Medicaid savings attributable to its section 1332 waiver as section 1332 pass-through funding.<sup>5</sup> Further, with regard to coordinated waivers, savings accrued as a result of either

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<sup>3</sup> For more information on states' section 1332 waivers, see [https://www.cms.gov/cciiio/programs-and-initiatives/state-innovation-waivers/section\\_1332\\_state\\_innovation\\_waivers](https://www.cms.gov/cciiio/programs-and-initiatives/state-innovation-waivers/section_1332_state_innovation_waivers)

<sup>4</sup> ACA sections 1332(b)(1)(A)-(D).

<sup>5</sup> From the 2022 Payment Notice final rule: "The pass-through amount would not be increased to account for any savings other than the reduction in Federal financial assistance. The pass-through amount would be reduced by any net increase in Federal spending or net decrease in Federal revenue if necessary to ensure deficit neutrality." 86 FR 24140.

proposed or current Medicaid or CHIP section 1115 demonstrations will not be factored into the assessment of whether a proposed section 1332 waiver meets the deficit neutrality guardrail, consistent with longstanding section 1332 guidance and implementing regulations.<sup>6</sup> 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 affordable health coverage is available for their residents.

### Premium Rates

#### *Public comments:*

During the federal comment periods, commenters in support of the waiver suggested that the \$15 per member per month (PMPM) premium for individuals with estimated household income of 200 to 250% of FPL should be eliminated to maximize and maintain continuous coverage for all eligible consumers. These commenters stated that even a small premium causes coverage churn among low- and moderate-income enrollees. Further, these commenters expressed concern with the State's assertion that it must charge a premium for adults with estimated household income of 200 to 250% of FPL because children at the same income levels pay a premium in the Child Health Plus (CHP) program. One commenter stated that charging a \$15 PMPM premium would generate \$16.2 million per year (assuming 90,000 of these individuals enroll), which the commenter considered a negligible effect on the State's section 1332 waiver program budget if the premium were to be eliminated. In response to comments, the \$15 PMPM premium for individuals with estimated household income of 200 to 250% of FPL in the EP Expansion was eliminated, which 13 commenters on the November addendum supported and no commenters opposed.

#### *Departments' Response:*

The State's final waiver application removed the \$15 PMPM premium for individuals with estimated household income of 200 to 250% of FPL in response to public comments. The Departments' review of the State's analysis and public comments, along with consideration of the Departments' experience with existing section 1332 waivers and other health programs, have led the Departments to determine that New York's waiver plan satisfies the affordability guardrail set forth in section 1332(b)(1)(B) of the ACA.

### Provider Reimbursement Rates

#### *Public Comments:*

Some commenters supporting the waiver also expressed support of the State's proposal to increase provider reimbursement rates. One commenter stated New York is investing up to \$800 million in reimbursement to improve access to health care providers for all EP Expansion enrollees. Further, this commenter stated that for the waiver's coverage expansion to ultimately be an effective strategy, the premium rates for coverage under the waiver must reflect provider costs of delivering high-quality services to enrollees. Another commenter stated the waiver would increase revenues for community health centers through higher provider reimbursements under the EP Expansion. This commenter stated that, as an additional proposal, New York could seek to align provider reimbursement under the waiver with Medicaid and Medicare by reimbursing health centers at the

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<sup>6</sup> From the 2022 Payment Notice final rule: "Savings accrued under either proposed or current Medicaid or CHIP section 1115 demonstrations will not be factored into the assessment of whether a proposed section 1332 waiver meets the deficit neutrality requirement." 86 FR 24140.

community health center bundled rate (i.e., the prospective payment system) for all EP Expansion enrollees, based on today's costs. Other commenters stated that these investments by the State, such as those to increase reimbursement to providers, should have instead been used to expand coverage to all state residents, regardless of immigration status.

*Departments' Response:*

The Departments appreciate the support for and have approved New York's section 1332 waiver. The Departments also appreciate the comments on the importance of increasing provider reimbursement rates to improve access to health care providers. New York's waiver makes investments that help address provider costs of delivering high-quality services to enrollees. For example, New York is making an investment of up to \$800 million to create reimbursement parity across all EP Expansion groups for hospital, inpatient, outpatient, and physician services starting in calendar year 2023 to improve access to health care providers and will continue the Quality Incentive Pool with the transition from the EP to the EP Expansion. These investments help to ensure that coverage under the waiver will be comparable to that provided without the waiver. As such, the Departments encourage the State to consider all strategies to manage provider reimbursement to ensure access to providers and issuer participation under the waiver. The Departments will also monitor any changes in provider participation in the EP Expansion and in issuer participation in the individual market as they relate to changes in provider reimbursement to ensure ongoing compliance with the statutory guardrails.

Regarding comments suggesting the State should have invested provider reimbursement funds in initiatives to expand coverage to all state residents, regardless of immigration status, the Departments defer to states to develop the scope of their waiver plans and remain committed to working with state partners to advance health care coverage policies. In response to comments received in the state and federal comment periods, New York updated its waiver plan to extend EP Expansion coverage to certain DACA recipients with estimated household income up to 250% FPL.

Implementation Concerns

*Public Comment:*

Commenters in support of the waiver noted that, even though the State asserts that there is a more than 95% overlap between existing QHP and EP provider networks today, even the most minimal disruption in providers or networks could lead to significant harm for consumers with serious or chronic medical conditions. Commenters recommended that the Departments work with the State to ensure that enrollees, particularly those who will be transitioning from the State's existing EP coverage to coverage under the EP Expansion, experience minimal disruption in their access to existing providers and provider networks. Commenters also recommended that the Departments ensure that the State consider whether there are ways to mitigate any impact, such as enhanced temporary flexibilities for certain enrollees to continue receiving care at formerly in-network providers who may now be out-of-network.

Commenters who submitted comments during the state comment period and June 2023 federal comment period stated the waiver raises important questions about the State's long-term vision for the QHP market. These commenters noted that individual market issuers have existing concerns about the financial sustainability of the QHP market as membership shrinks statewide and adverse selection persists due to high monthly premiums and cost-sharing expenses. Commenters stated

that, without intervention, the proposed waiver would likely exacerbate these concerns because individuals who would otherwise enroll in QHP coverage in the individual market would now instead enroll in coverage under the State's waiver plan. These commenters stated that the waiver application currently assumes carrier participation will not diminish because of the waiver, but the long-term implications are a point of concern for issuers that offer QHP(s) now in the State's individual market. Commenters recommended that the Departments proactively develop a plan to mitigate the impact of the waiver on the QHP market, including structural changes to ensure that issuers remain in the market over time.

In response to New York's August 2023 addendum, the majority of comments submitted during the August 2023 federal comment period expressed support for the State's proposal detailing the IRIP as an effective mechanism to prevent premium increases for QHP enrollees while ensuring that issuers remain financially whole. Commenters in support of the IRIP had some suggestions for the State to consider in terms of implementation of the program and methodology. One commenter appreciated that New York developed the IRIP based on data and integrated the IRIP within the existing rate-setting rules and Exchange schedule. One commenter noted it will be important to ensure that any alternative mechanism for determining risk pool premium impacts follow existing rate-setting requirements and incorporate public comment, and suggested that "New York consider whether in future years to use actual with-waiver premiums based on individual market experience." Several commenters noted the importance of timely reimbursements and expressed support for the state to process reimbursement plans quarterly rather than making two payments annually. One commenter in support of the IRIP specifically supported the absence of any final reconciliation of the reimbursement provided to issuers under IRIP. On the other hand, the one commenter who opposed the IRIP took issue with the assumptions used in the methodology and the design of the program. Specifically, this commenter asserted that the State's August 2023 addendum did not provide a methodology or description about how this reimbursement program will work, and that the size of the IRIP reimbursements should be clear and capped.

One commenter in support of the IRIP noted that considering Medicaid unwinding and the affordability concerns for individuals migrating from Medicaid and the EP to QHP coverage, the IRIP will help eliminate any premium increases that individuals enrolled in QHPs might otherwise face due to the waiver. Some commenters in support of the waiver noted that the IRIP is effectively a targeted reinsurance program, while other commenters emphasized the importance of New York continuing to explore other long-term solutions (e.g., reinsurance or risk adjustment) to ensure a strong and stable individual market.

In addition, the one commenter opposed to the IRIP specified that: 1) The IRIP is regressive in that it reduces premiums in the individual market and disproportionately benefits higher-income residents; and 2) IRIP pass-through funding should be redirected to eliminate premiums in the EP Expansion, cover the State's residents currently ineligible for coverage, reduce silver plan deductibles, and adopt premium assistance.

In response to the November addendum, in which the State provided additional details regarding the IRIP and adopted the recommendation to make payments quarterly, three commenters expressed support for the IRIP and four expressed opposition, citing concerns that issuers would be disincentivized to control costs and expressed a preference for using this funding to increase coverage for immigrants.

*Departments' Response:*

The Departments aim to assist states with tailoring their health insurance markets to expand coverage, lower costs, and ensure that affordable health coverage is available for their residents. The Departments have determined that New York's waiver plan satisfies the statutory guardrails (as set forth in sections 1332(b)(1)(A)-(D) of the ACA), and have determined that implementation of this new coverage program will increase enrollment and affordability for a group of lower-income individuals. As part of oversight and monitoring of the waiver, the Departments will monitor coverage under the waiver and any changes to provider participation in the EP Expansion in response to changes in state network adequacy requirements and provider reimbursement, as well as whether there are any changes in issuer participation, that could impact the waiver's compliance with the statutory guardrails.

Current New York State Insurance Law §§ 3217-d(c), 4306-c(c), and 4804(f) and Public Health Law § 4403(6)(f) require issuers to permit a new enrollee to continue an ongoing course of treatment with a current provider for up to 60 days if the individual has a life-threatening or degenerative and disabling condition or has entered the second trimester of pregnancy. Further, EP members are permitted to change their health plan at any time and may request single case agreements in order to see providers who are not in-network. These protections and flexibilities will continue under the waiver and allow EP Expansion enrollees to receive care from providers who may now be out-of-network.

The State's waiver provides for implementation of the IRIP, which will provide reimbursement to issuers in lieu of approving higher individual market premium rates that reflect the impact of the population with estimated household income of 200 to 250% of FPL moving to the EP Expansion program. In addition to reducing premiums for this cohort of enrollees, this investment in the IRIP<sup>7</sup> would mitigate premium increases for those with estimated household income over 250% FPL, would maintain stability and issuer participation, and should help avert the potential losses of coverage in the individual market about which commenters expressed concerns. The Departments have approved the IRIP as part of the State's waiver plan and have determined that New York's waiver plan meets the statutory guardrail requirements in sections 1332(b)(1)(A)-(D) of the ACA. As such, while the State could have considered (and plans to consider in the future) other methods to mitigate potential premium increases in the individual market, this does not affect the Departments' evaluation of whether the State's waiver plan meets the statutory guardrails.

In terms of the assumptions used to develop the IRIP, the State's projections include the expected enrollment in the EP Expansion from the Medicaid unwinding population. To develop the expected reimbursements to issuers, the State used rate filing information, completed an actuarial and economic analysis, and revised the IRIP plan in the November and December 2023 addenda with additional details on the process and methodology for reimbursements, including that IRIP reimbursement for PY 2024 will be capped at approximately \$44M. In its final waiver application, the State also provided additional details about how the IRIP amounts will be calculated and noted in its November and December 2023 updated addenda that IRIP payments will be made on a quarterly basis and will not be reconciled. The Departments also note that there is reasonable

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<sup>7</sup> As described in the August and November 2023 addenda

variation between expected program size for the IRIP and state reinsurance programs.<sup>8</sup> The State has also indicated it will continue to review and evaluate the data and justifications with regard to submitted rates on an annual basis to determine the IRIP amount.

Regarding whether the IRIP funding should be redirected to other programs, as discussed above, the Departments defer to states to develop the scope of their waiver plans and remain committed to working with state partners to advance health care coverage policies. Further, the Departments determined that the State's waiver will 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.

### Procedural Concerns

#### *Public Comments:*

Commenters who submitted comments during the June 2023 federal comment period expressed concern that the State's May 12, 2023, waiver application submission was substantially different from the draft presented for public comment during the State's public comment period. Specifically, commenters stated that the State's waiver application was revised after the comment period to include \$5.8 billion in spending over five years to fund increases in provider reimbursement rates, long term services and supports, a quality incentive pool, and behavioral health grants in lieu of expanding coverage to undocumented residents, and as such, New York failed to follow the public comment requirements.

With respect to the August 2023 federal comment period, one commenter asserted that the process for public input on the IRIP was inadequate and rushed. Specifically, this commenter noted that prior to submission of the August 23, 2023, addendum to the Departments, carriers received three briefings, but that the State did not hold any other public or stakeholder meetings; and that, while a few stakeholders received an email on August 23, 2023, from the State, there was no update to the State's public 1332 waiver homepage. Another commenter suggested that IRIP or any method chosen for addressing changes to the individual market risk pool should be subject to public comment in future years. Other commenters appreciated New York's engagement with the industry on IRIP and the transparency of developing the approach. No comments raising procedural concerns were received during the November public comment period.

#### *Departments' Response:*

The Departments disagree that the State failed to comply with applicable public comment requirements. Consistent with section 1332(a)(4)(B) of the ACA and the implementing regulations,<sup>9</sup> New York conducted two state-level public comment periods and held four public hearings. Public hearings on the initial application were held on February 22 and 23, 2023, two additional public hearings on the August and November addenda were held on November 17 and 28, 2023. In addition, an initial federal comment period was held after the State's application was received and deemed complete by the Secretaries, and two additional federal comment periods were held after the State submitted its August 2023 and November 2023 addenda. The version of the waiver plan now being approved is not different in kind from the version that the State

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<sup>8</sup> See <https://www.cms.gov/ccio/programs-and-initiatives/state-innovation-waivers/downloads/1332-data-brief-dec2022.pdf>

<sup>9</sup> Requirements for the state comment period are codified at 31 CFR 33.112(a)(1) and 45 CFR 155.1312(a)(1), and federal public comment period requirements are codified at 31 CFR 33.116 and 45 CFR 155.1316.

published for comment on August 23, 2023, or from the version that was the subject of the two public hearings in November 2023. In addition, the updates to the waiver plan the State made in response to comments confirm the effectiveness of the process. Interested parties also had an opportunity to comment on New York's initial waiver application, its August 2023 addendum, and its November 2023 addendum, during the three federal comment periods. The initial federal comment period ran from June 6, 2023, through July 5, 2023; the second federal comment period was from August 23, 2023, through August 30, 2023; and the third federal comment period was from November 17, 2023, through December 2, 2023.

The Departments anticipate that some items in a state's waiver application may change after the state and federal public comment periods, particularly as comments are considered and addressed. For example, New York's August 2023 addendum—which proposed inclusion of IRIP in the State's waiver plan—sought to address concerns raised by commenters that the waiver might adversely impact the stability of the individual market. The addition of the IRIP was responsive to commenters' recommendation that efforts be made to mitigate the impact of the waiver on the individual market. While the Departments do not believe that the State's August 2023 addendum was substantial enough to require further public notice and comment period, the Departments chose to post the addendum to the CMS Section 1332 Waiver website and provide interested parties the additional opportunity to comment from August 23, 2023, through August 30, 2023, in an effort to promote transparency. The addition of the IRIP to the waiver plan does not substantially change the analysis of the guardrails for the State's waiver plan for those with estimated household income up to 250% FPL; its only relevant effect is to maintain affordability and coverage compared to the baseline for those with estimated household income above 250% of FPL.

As a second example, the \$5.8 billion in spending that commenters referenced as having been added after the State comment period are investments New York added to its waiver plan as additional uses of pass-through funding in response to comments (that is, increasing provider reimbursement rates, adding coverage for long term services and supports, continuing the State's quality incentive pool, and providing a new grant program for social determinants of health and behavioral health).<sup>10</sup> According to the State, these initiatives are intended to make services more accessible and affordable for EP Expansion enrollees and enrich the benefits package for EP Expansion enrollees; further, some of these programs were already in existence under the EP (i.e., quality incentive pool and provider reimbursement). Relatedly, during the state and federal comment periods, commenters noted that provider reimbursement rates should be adequate to ensure enrollees have access to care and are reflective of provider costs to deliver high-quality services. Further, commenters noted that reimbursement rates and rate negotiations are a consideration for network participation with participating providers in the State's waiver program. The Departments also note that the changes with respect to the \$5.8 billion investments did not materially change the State's analysis of or negatively impact the waiver's compliance with the

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<sup>10</sup> The enclosed STCs note that the State must ensure sufficient funding for the components of the waiver that have a direct impact on the statutory guardrails. These components include supporting coverage and affordability for enrollees in the EP Expansion (e.g., cost-sharing and premiums) in the manner described in the State's waiver plan, the IRIP, and any associated administrative costs. To the extent funds are available, as described in the State's waiver plan, the State's waiver will also include the quality incentive pool, and providing incentives for health plans to offer benefits in the areas of social determinants of health and behavioral health.

statutory guardrails.

Finally, while the Departments do not believe that the State's November 2023 addendum was substantial enough to require further public notice and comment period, the Departments opted to host a third public comment period to solicit feedback on the State's November 2023 addendum to further enhance transparency. The Departments did not hold a comment period on the December addendum given that the State noted the possibility of including the DACA population in the November addendum, for which a comment period had been held. In addition, the inclusion of the DACA population did not substantially change the analysis of the waiver plan's compliance with the statutory guardrails.

#### BHP Trust Fund

##### *Public Comment:*

Some commenters suggested that New York should be allowed to use its existing BHP Trust Fund surplus to open EP Expansion coverage to all state residents, regardless of immigration status, and others suggested that New York be able to leverage its BHP Trust Fund to provide services under the section 1332 waiver for individuals who would otherwise qualify for the BHP to improve consumer affordability during the transition to the waiver.

##### *Departments' Response:*

The Departments appreciate these comments and note that section 1331(d)(2) of the ACA limits the use of BHP Trust Funds to reducing the premiums and cost-sharing of, or providing additional benefits for, eligible individuals enrolled in the BHP's standard health plans. Consistent with section 1331(e)(1) of the ACA, BHP-eligible individuals must be lawfully present in the United States. Therefore, BHP Trust Funds may not be used toward BHP coverage for individuals who are not lawfully present. Similarly, because coverage offered under the section 1332 waiver are not benefits for eligible individuals enrolled in BHP standard health plans, BHP Trust Funds may not be used to fund them under the waiver. Section 1331 of the ACA is not a waivable provision under section 1332 of the ACA,<sup>11</sup> so these provisions cannot be modified or waived pursuant to a section 1332 waiver. Finally, the State submitted a request to suspend its BHP as part of the transition to the EP Expansion program under its section 1332 waiver. As such, the EP Expansion is not a BHP and is not subject to section 1331 of the ACA or its implementing regulations.

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<sup>11</sup> ACA section 1332(a)(2).



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: New York State Department of Health —Patient Protection and Affordable Care Act  
Section 1332 Waiver Approval

AWARDEE: New York State Department of Health

I. PREFACE

The following are the specific terms and conditions (STCs) for the New York State Department of Health’s (hereafter referred to as the “State”) Patient Protection and Affordable Care Act (ACA)<sup>1</sup> section 1332 State Innovation Waiver to create a new coverage program and to expand eligibility for the State’s new coverage program (hereafter referred to as the “Essential Plan (EP) Expansion” or “waiver”) to certain New York residents with estimated household income up to 250% of the Federal Poverty Level (FPL) (hereafter referred to as “waiver” or “waiver plan”), 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 April 1, 2024, through December 31, 2028, unless the waiver is extended, otherwise amended, suspended, or terminated by the parties in accordance with the applicable processes set forth in and provided by these STCs; however, the Departments reserve the right to amend these STCs when the Departments make the annual determinations of the pass-through amounts for April 2024 through December 2028. The State’s final waiver plan application to waive certain provisions of the ACA<sup>2</sup> is specifically incorporated by reference into these STCs, except with regard to any proposal or text in the waiver plan that is inconsistent with the Departments’ approval of the waiver or these STCs.

**1. ACA Provisions Waived under Section 1332 State Innovation Waiver (Section 1332 waiver).** Section 36B of the Internal Revenue Code is waived to the extent it would otherwise provide that a month is a “coverage month” (and therefore 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% FPL, as well as section 1402 of the ACA to the extent it would otherwise require New York residents under age 65 and with estimated household income at or below 250% of FPL to be eligible for cost-sharing reductions for the purposes of enrolling these individuals in the EP Expansion, as described in the State’s waiver application. Additionally, section 1312(c)(1) of the ACA is waived to the extent it would otherwise prohibit including individuals with estimated household income of 200 to 250% of FPL in the single risk pool when establishing the market-wide index rate for the purposes described in the

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<sup>1</sup> 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.”

<sup>2</sup> The State’s final approved waiver application refers to the May 12, 2023, application and the December 18, 2023, addendum (which also encompasses the August and November addenda).

State's waiver application.

**2. Changes in State Law and Technical Changes to the Waiver.** The State must inform the Departments of any change in state law or regulations that could impact the waiver, including any changes to the requirements of the State's waiver plan, or any technical changes to the waiver occurring after the date of this approval letter, within seven (7) calendar days of any such changes. Technical changes are changes that do not impact the statutory guardrails (as set forth in sections 1332(b)(1)(A)-(D) of the ACA) or any obligations of the State or the Departments, such as changes to Essential Plan (EP) Expansion copay levels that do not impact the actuarial value of the plan. If the Departments determine that the change in state law or regulation or the change to the State's 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 as set forth in STC 9.

**3. Funds to Operate the Waiver.** The State's waiver plan will be funded through a combination of federal pass-through funding and state funding from state appropriations. The State must ensure sufficient funds are available on an annual basis for the waiver to operate as described in the State's waiver plan.<sup>3</sup>

**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, title 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 CFR 33.120(a) and 45 CFR 155.1320(a), the State must comply with all applicable federal laws and regulations, unless a law or regulation has been specifically 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 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

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<sup>3</sup> The Departments emphasize that the State must ensure sufficient funding for the components of the waiver that have a direct impact on the statutory guardrails. These components include supporting coverage and affordability for enrollees in the EP Expansion (e.g., cost-sharing and premiums) in the manner described in the State's waiver plan, the IRIP, and any associated administrative costs. To the extent funds are available, as described in the State's waiver plan, the State's waiver will also include the quality incentive pool, and providing incentives for health plans to offer benefits in the areas of social determinants of health and behavioral health.

to submit a new waiver proposal. In the event that any aspect, term, or provision of this waiver or these STCs is held invalid, illegal, or unenforceable by a court in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other aspect, term, or provision of this waiver or these STCs provided that the remaining aspects, terms, and provisions of the waiver continue to comply with the statutory guardrails. The Departments will notify the State at least thirty (30) calendar 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 requirements (including rate review and consumer noticing 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 thirty (30) calendar days of the Departments' notification 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) identified in STC 1 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 State's 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 its waiver plan consistent with the following requirements:

- (a) Request for suspension, withdrawal, or termination: If the State wishes 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 nine (9) months<sup>4</sup> 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 thirty (30) calendar 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

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<sup>4</sup>This timeframe reflects the complexity and novel nature of New York's section 1332 waiver and the need for additional time for coordination and review of any waiver suspension, withdrawal, or termination requests submitted by the State.

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 fourteen (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 CFR 33.130(a) and 45 CFR 155.1330(a), an amendment is a change to a waiver plan that is not otherwise allowable under these STCs, a change that could impact any of the 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 CFR 33.130 and 45 CFR 155.1330, to amend a waiver the State must comply with the following requirements:
  - (1) The State must submit a letter to the Departments notifying them in writing of its intent to request an amendment to its 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 fifteen (15) months prior to the waiver amendment's proposed implementation date and to engage with the Departments early in its development of a potential waiver amendment. The State may wish to submit this letter of intent more than fifteen (15) months prior to the 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 waiver plan. Within approximately thirty (30) calendar 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 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 the proposed waiver amendment(s) would be subject to any additional or different requirements consistent with STC 9(c)(7).
    - a. For example, depending on the complexity of the amendment request, scope of changes from the waiver plan, operational/technical changes, or implementation considerations, the Departments may impose requirements similar to those specified in 31 CFR 33.108(f) and 45 CFR 155.1308(f) for new section 1332 waiver applications.

- (3) The State should submit its waiver amendment request in writing in electronic format, as outlined in STC 9(c), no later than nine (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 CFR 33.108(b) and 45 CFR 155.1308(b) for new waiver applications, the State must submit the 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 amendment request, the State may want to submit the amendment request earlier than nine (9) months prior to implementation. In developing the implementation timeframe for its 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 waiver amendment request.
  - (4) The Departments reserve the right to deny or withhold approval of a state 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 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 statutory 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 waiver plan 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 waiver amendment request. The State must conduct the State public notice process that is specified for new applications at 31 CFR 33.112 and 45 CFR 155.1312. It may be permissible for a state to use its annual public forum required under 31 CFR 33.120(c) and 45 CFR 155.1320(c) for the dual purpose of soliciting public input on a proposed waiver amendment request and on the progress of its waiver plan;
  - (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 waiver amendment request;
  - (4) An implementation plan with operational details (if appropriate) to demonstrate that the 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 waiver amendment request;

- (5) An updated actuarial and/or economic analysis demonstrating how the waiver, as amended, will meet the 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 waiver amendment on pass-through funding, as well as any new proposed uses for pass-through funding if applicable; and
- (7) Any further requested information and/or analysis that is determined necessary by the Departments to evaluate the waiver amendment request.

#### **10. State Request for Waiver Extension.**

- (a) Definition: For purposes of these STCs and per 31 CFR 33.132 and 45 CFR 155.1332, a waiver 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 waiver terms, not other changes to the existing waiver plan. If a state also seeks to make substantive changes to its waiver plan along with seeking an extension, the Departments will treat those changes as amendments and the requirements of STC nine will also apply.

- (b) Extension Request Submission Process: Consistent with 31 CFR 33.132 and 45 CFR 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 waiver at least one (1) 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 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 thirty (30) calendar 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 waiver extension request.
  - (2) The State must submit its waiver extension request in writing in electronic format, consistent with the format and manner requirements applicable to initial waiver

applications under 31 CFR 33.108(a) and 45 CFR 155.1308(a).

- (3) An extension request shall be deemed granted unless the Secretaries, within ninety (90) calendar days after the date of the State's submission of a complete 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's 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 CFR 33.124 and 45 CFR 155.1324, the Departments may require additional data and information to be submitted to review the extension request in accordance with 31 CFR 33.120(f)(2) and 45 CFR 155.1320(f)(2). A 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 waiver;
  - (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 waiver extension request;
  - (4) An explanation of the process followed by the State to ensure meaningful public input on the proposed waiver extension request at the state level. It may be permissible for the State to use its annual public forum under 31 CFR 33.120(c) and 45 CFR 155.1320(c) for the dual purpose of soliciting public input on a proposed waiver extension request and on the progress of its waiver plan; and
  - (5) Other information as requested by the Departments that is necessary to reach a decision on the waiver extension request.

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

- (d) Temporary Extension of Waivers: The Departments may extend an existing 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) and (2), the Departments will provide guidance on wind-down of the State's waiver.

**11. Reporting.** The State must submit quarterly and annual reports as specified in 31 CFR 33.124 and 45 CFR 155.1324.

*Annual Reports:* The State must submit a draft annual report to the Departments within ninety (90) calendar days after the end of the first waiver year and each subsequent year that the waiver is in effect. The State will publish the draft annual report on the State's public website within thirty (30) calendar days of submission to the Departments. Within sixty (60) calendar days of receipt of comments from the Departments on 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 thirty (30) calendar days of approval by the Departments.

*Report Contents:* Each such annual report must include:

- (a) The progress of the waiver;
- (b) Data and metrics sufficient to show compliance and assist evaluation of the waiver's compliance with sections 1332(b)(1)(A) through (D) of the ACA:
  - (1) Projected and actual individual market enrollment in the State, both on-Exchange (separately for enrollees with advance payments of the premium tax credit (APTC) and without APTC) and off-Exchange. For data on enrollees with APTC, provide enrollment by age (under 18 years, 18 through 34 years, 35 through 44 years, 45 through 54 years, 55 through 64 years, and 65 years and over), and, to the extent possible, by race, ethnicity, language preference, and disability status, separately for those with estimated household income up to 200% of FPL, those with estimated household income over 200% of FPL and up to 250% of FPL, and those with estimated household income over 250% of FPL.
  - (2) Projected and actual EP Expansion enrollment in the State by age (under 18 years, 18 through 34 years, 35 through 44 years, 45 through 54 years, 55 through 64 years, and 65 years and over); by Pregnancy Choice status;<sup>5</sup> by DACA receipt; and, to the extent possible, by race, ethnicity, language preference, and disability status, separately for those with estimated household income up to 200% of FPL and those with estimated household income over 200% of FPL.
  - (3) Projected and actual average individual market premium rate (i.e., total individual market premiums divided by total member months of all enrollees).
  - (4) Projected and actual Second Lowest Cost Silver Plan (SLCSP) premium under the waiver and an estimate of the SLCSP premium as it would have been without the waiver, for a representative consumer (e.g., a 21-year-old non-smoker) in each rating area.
  - (5) Plan parameters (including enrollee premium contributions, out-of-pocket maximums, deductibles, and other cost-sharing parameters) for the EP Expansion offered to each enrollment cohort.

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<sup>5</sup>Individuals enrolled via Pregnancy Choice should include both pregnant enrollees and postpartum enrollees who would otherwise be eligible for Medicaid due to their pregnancy or postpartum status.



- (6) The amount of interest generated by the State's BHP Trust Fund and remitted to CMS.
  - (7) The percentage overlap between the EP Expansion and QHP provider networks.
  - (8) Any available data on the experience of EP Expansion enrollees including survey data describing barriers to enrollment or accessing services and data related to transitions between Medicaid, the EP Expansion, and QHPs offered through the State Exchange, including data for individuals whose current coverage type is unknown.
- (c) A summary of the annual post-award public forum, held in accordance with 31 CFR 33.120(c) and CFR 155.1320(c), including all public comments received at such forum regarding the progress of the waiver and action taken in response to such concerns or comments;
  - (d) Technical changes to the State's waiver plan, including the funding level the program will be operating at for the next plan year, or other waiver plan changes as specified in STC 2;
  - (e) Notification of changes to state law or regulations (e.g., including but not limited to changes relating to network adequacy requirements) that may impact the waiver as specified in STC 2;
  - (f) Reporting of:
    - (1) Federal pass-through funding spent, in aggregate and by spending category, on all expenditures, including supporting affordability for enrollees in the EP Expansion (e.g., cost-sharing and premiums), the capitation payment (which will encompass enhancing benefits for enrollees, community-based long-term services and supports, and provider reimbursements), coverage for pregnant individuals who remain enrolled in the EP Expansion, coverage for DACA recipients enrolled in the EP expansion, supporting the Quality Incentive Pool for issuers, incentives for health plans to offer benefits in the areas of social determinants of health and behavioral health, administrative costs, and IRIP reimbursements.
    - (2) The unspent balance of federal pass-through funding for the reporting year, if applicable.
  - (g) The amount of state funding from state appropriations, or other funding to support the waiver for the reporting year;
  - (h) Any evidence of fraud, waste, or abuse on the part of participating providers, plans, or the State EP Expansion Agency known to the State;
  - (i) Other information the Departments determine is necessary to calculate pass-through amounts or to evaluate the waiver.

*Payment Schedule:* If appropriate, the State will inform the Departments of any updates to the

State's waiver program payment schedule by April 1, 2024.

*Quarterly and Other Reports:* Under 31 CFR 33.120(b), 31 CFR 33.124(a), 45 CFR 155.1320(b), and 45 CFR 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 sixty (60) calendar days following the end of each calendar quarter. The State can submit its annual report in lieu of the fourth quarter report.

*Operational Report:* In addition, the State must submit a report to the Departments that details that project timeline for implementation of the waiver and associated milestones, within 90 calendar days of waiver approval. The State must also comply with operational readiness reviews and open enrollment readiness reviews as required by the Departments.

**12. Post Award Forum.** Per 31 CFR 33.120(c) and 45 CFR 155.1320(c), within six (6) 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. 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 thirty (30) calendar days prior to the date of the planned public forum. Per 31 CFR 33.120(c) and 45 CFR 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 CFR 33.124 and 45 CFR 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 statutory guardrails set forth in sections 1332(b)(1)(A) – (D) of the ACA 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 CFR 33.120(f) and 45 CFR 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, pass-through funding is based on the amount of premium tax credits (PTC) that would have been provided to individuals under section 36B of the Internal Revenue Code in the State absent the waiver, but that will not be provided under the State's waiver, reduced, if necessary, to ensure deficit neutrality as required by section 1332(b)(1)(D) of the ACA. In addition, the waiver of PTC for individuals with estimated household income up to 250% of FPL (and thereby also for individuals with

estimated household income up to 200% of FPL) will eliminate the federal BHP payment to the State, and the Departments will pass through these BHP savings to the extent they correspond to PTC that the Departments project would otherwise have been paid on behalf of individuals enrolled in QHPs, not to exceed the full amount of annual BHP savings. The State will receive pass-through funding for the purpose of implementing the waiver, including administration of the waiver, when the requirements described below are met.

Starting with the 2024 plan year, by March 15, 2024, the State will provide the following information to the Departments. For the 2025 plan year and each plan year thereafter, by September 15 of the preceding year or once the State has finalized rates for the applicable plan year, whichever is later, the State will provide the following information to the Departments:

- (a) The final SLCSP rates for individual health insurance coverage for a representative individual (e.g., a 21-year-old non-smoker) in each rating area or service area (if premiums vary by geographies smaller than rating areas) for the applicable plan year;
- (b) The estimate of what the final SLCSP rates for individual health insurance coverage for a representative individual in each rating area or service area (if premiums vary by geographies smaller than rating areas) would have been absent approval of this waiver for the applicable plan year. The State must include with this information the methods and assumptions the State used to estimate the final SLCSP rates and the State's estimate of what the final SLCSP rates would have been absent approval of the waiver for each rating area or service area absent approval of this waiver; the State's methods and assumptions should specify, in particular, any assumptions relating to issuer participation or plan offerings absent the waiver;
- (c) To facilitate monitoring and evaluation of the waiver's impact on premiums, including the impact of rating policies associated with IRIP, the actuarial attestation—regarding issuers' development of the rates provided in (a) and (b)—specified by the Departments and that has been signed by an actuary who is qualified to do so and is a member of the American Academy of Actuaries;
- (d) Separately for enrollees with estimated household income of 200 to 250% of FPL and for enrollees with estimated household income above 250% of FPL, the total amount of all premiums expected to be paid for individual health insurance coverage and, separately, for the EP Expansion for the applicable plan year;
- (e) Separately for enrollees with estimated household income of 200 to 250% of FPL and for enrollees with estimated household income above 250% of FPL, what total premiums for individual health insurance coverage and, separately, for the EP would have been for the applicable plan year without the waiver;
- (f) Separately for enrollees with estimated household income up to 200% of FPL, for enrollees with estimated household income of 200 to 250% of FPL, and for enrollees with estimated household income above 250% of FPL, the total number of member months expected in individual health insurance coverage and, separately, in the EP Expansion for the applicable plan year. To facilitate monitoring and

evaluation of the impact of rating policies associated with the IRIP, please provide these data broken out by enrollee age (under 18 years, 18 through 34 years, 35 through 44 years, 45 through 54 years, 55 through 64 years, and 65 years and over). For EP Expansion enrollment, these data should also be reported separately by Pregnancy Choice status and DACA receipt;

- (g) Separately for enrollees with estimated household income up to 200% of FPL, for enrollees with estimated household income of 200 to 250% of FPL and for enrollees with estimated household income above 250% of FPL, what the total number of member months in individual health insurance coverage and, separately, in the EP would have been for the applicable plan year absent the waiver. To facilitate monitoring and evaluation of the impact of rating policies associated with the IRIP, please provide these data broken out by enrollee age (under 18 years, 18 through 34 years, 35 through 44 years, 45 through 54 years, 55 through 64 years, and 65 years and over);
- (h) The amount of APTC paid by month and rating area for the current plan year to date. Note that for the March 2024 submission (for 2024 pass-through reporting), these data should be reported for the full 2023 plan year. For the March 2024 and September 2024 submissions (for 2024 and 2025 pass-through reporting, respectively) these data should be reported separately, by enrollee age group (aged  $\leq 64$  and aged  $> 64$ ), for enrollees with estimated household income at or below 250% of FPL and for enrollees with estimated household income above 250% of FPL;
- (i) The number of APTC recipients by month and rating area for the current plan year to date. Note that for the March 2024 submission (for 2024 pass-through reporting), these data should be reported for the full 2023 plan year. For the March 2024 and September 2024 submissions (for 2024 and 2025 pass-through reporting, respectively) these data should be reported separately, by enrollee age group (aged  $\leq 64$  and aged  $> 64$ ), for enrollees with estimated household income at or below 250% of FPL and for enrollees with estimated household income above 250% of FPL;
- (j) The state-specific age curve premium variation for the current and upcoming plan year. For the March 2024 submission, the “current” year will be 2023;
- (k) The state-specific uniform family tiers for the current and upcoming plan year;
- (l) Reports of the estimated total EP Expansion reimbursements (state premium subsidies and, if applicable, cost-sharing) and IRIP reimbursements for the upcoming plan year. For the estimated IRIP reimbursements, provide the assumptions used by the State to develop the estimate;
- (m) Reports of the total enrollment estimates for individual health insurance coverage, both with and without the waiver for the upcoming plan year;

- (n) An explanation of why the experience for the upcoming plan year may vary from previous estimates and how assumptions used to estimate the impact have changed. This includes an explanation of changes in the estimated impact of the waiver on aggregate premiums, the estimated impact to the SLCSP rates, and the estimated impact on enrollment. The State should also explain changes to the estimated state subsidy and, if applicable, cost-sharing program estimates relative to prior estimates;
- (o) For the calculation of pass-through associated with enrollees with estimated household income up to 200% of FPL:
- i. Consistent with (b) above, the estimate of what the final SLCSP rates for individual health insurance coverage for a representative individual in each county would have been absent approval of this waiver for the applicable plan year;
  - ii. The estimate of what the annual Essential Plan member months in each county for each of the following estimated household income brackets would have been absent approval of this waiver for the applicable plan year: ≤ 100% of FPL, > 100 to 138% of FPL, > 138 to 150% of FPL, > 150 to 200% of FPL;
  - iii. Through December two years prior to the applicable pass-through year (i.e., through December 2022 for the 2024 pass-through reporting submission), the actual Essential Plan or EP Expansion member months in each county by estimated household income (according to the income brackets in (o)(ii) above); coverage family size (i.e., one adult, two adults, one adult plus child(ren), and two adults plus child(ren)); and tax household size. For 2024 and 2025 pass-through reporting, please provide these data by quarter; and
- (p) Any other information or data requested by the Departments.

The Departments may also request information or data to be submitted earlier than September 15 of the preceding year, as needed to facilitate the timely calculation of pass-through funding.

The estimated amount of pass-through funding for April 2024 through plan year 2028 will be communicated to the State, conditional on receipt of items (a) through (p) in the paragraph above by the date specified above, 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, for calendar years 2025 through 2028, will be made available no later than April of the applicable calendar year. Due to the nature, structure, and financing of the waiver, an interim determination with respect to a portion of the pass-through amount will be made, and the associated funding will be made available, in January of the applicable calendar year for calendar years 2025 through 2028. For plan year 2024, given the April 1 effective date of the waiver, the pass-through amount will be made available no later than July 2024, and an interim determination with respect to a portion of pass-through amount will be made, and the associated funding will be made available, in April 2024. The pass-through amount for April 2024 through plan year 2028 will be calculated by the Departments annually (per section 1332(a)(3) of the ACA) and reported to the State on the earliest date practicable, conditional on receipt of information identified in items (a)

through (p) in the paragraph above by the applicable deadline.

The pass-through funds cannot be obligated prior to the effective date for the waiver. The State agrees to use the full amount of pass-through funding for purposes of implementing the State's waiver. This includes administration and implementation of the EP Expansion and affordability program under the waiver, such as premium subsidies and, if applicable, cost-sharing. In addition to the EP Expansion program under the waiver, New York would use pass-through funding to support a quality incentive pool for EP Expansion issuers, community-based long-term services and supports, incentives for health plans to offer benefits in the areas of social determinants of health (SDOH) and behavioral health (BH), provider reimbursements, and the IRIP. Moreover, to the extent pass-through funding exceeds the amount necessary for the State 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 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 waiver period, December 31, 2028. 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 CFR 33.120(d) and 45 CFR 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 statutory guardrails.

- (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 CFR 33.120(e) and 45 CFR 155.1320(e).
- (c) The Departments will recover unused pass-through funding. The State must comply with all necessary steps to facilitate the recovery of such amounts by the Departments within a prompt timeframe.

*Jim McDonald*

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James V. McDonald  
Commissioner  
New York State Department of Health  
State of New York

Date: March 8, 2024

*Chiquita Brooks-LaSure*

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Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare & Medicaid Services

Date: March 1, 2024

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Aviva Aron-Dine  
Acting Assistant Secretary, Tax Policy  
U.S. Department of the Treasury

Date: \_\_\_\_\_

