



FULL PUBLIC NOTICE
Department of Health
New York Essential Plan Expansion
(Section 1332 State Innovation Waiver)

In compliance with 31 CFR 33.112 and 45 CFR 155.1312, notice is hereby provided that the New York State Department of Health (the State) intends to submit a Section 1332 State Innovation Waiver to the Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services (HHS) and the Department of Treasury (Treasury) for the expansion of the Essential Plan. This notice serves to open the 30-day public comment period on February 9, 2023, which closes on March 11, 2023.

Waiver Summary and Objectives

The State is requesting approval of the 1332 Waiver to expand Essential Plan coverage beyond the current eligible populations to include residents with incomes up to 250% of the FPL. Through this expansion of Essential Plan coverage, the State seeks to reduce the uninsured population in New York by increasing access to high quality, affordable health insurance for low- and moderate-income individuals.

Currently, the Essential Plan is federally designated as a Basic Health Program (BHP) under Section 1331 of the Affordable Care Act (ACA). The Essential Plan provides enrollees with comprehensive coverage with no premiums, no deductibles, and low-cost sharing. Essential Plan eligibility is currently limited to individuals who would have been eligible for state-only Medicaid prior to 2016 and individuals with incomes above the Medicaid ceiling and up to 200% of the FPL, ages 19 – 64, who would otherwise be eligible to purchase Qualified Health Plans (QHPs) and receive premium tax credits (PTCs) on the Exchange (NY State of Health).

Under the Waiver, the State is requesting to establish an identical Essential Plan program for currently eligible populations under Section 1332 Waiver authority, instead of Section 1331 of the ACA, with expanded eligibility to the new population. The Essential Plan under Section 1332 Waiver authority would continue to include coverage of all Essential Health Benefits (EHBs). The State is also requesting continued use of the BHP Trust Fund for the population traditionally eligible for the BHP under Section 1331 of the ACA.

Why is the Waiver Needed?

The State is not legally able to expand eligibility of the Essential Plan to new consumers under Section 1331 of the ACA. The Waiver is required to grant the State the federal authority necessary to expand Essential Plan coverage under Section 1332. To carry out its waiver plan, New York proposes to waive section 36B of the Internal Revenue Code, which creates the ACA's premium tax credit, as permitted under section 1332(a)(2) and will waive any other provisions the Departments deem necessary to implement this waiver plan. Waiving this provision is integral to the waiver plan and to eligibility for pass-through funding.



Waiver Impact

The change in federal authority for the Essential Plan from Section 1331 to Section 1332 will not have administrative or operational impacts for current Essential Plan consumers. All consumers enrolled in the Essential Plan with incomes up to 200% of FPL will continue to have no premiums, no deductibles, and current maximum out-of-pocket contribution levels. New consumers under the Waiver with incomes between 200% and 250% of the FPL will have \$15 monthly premiums, no deductibles, and low out-of-pocket costs. These premium and cost sharing requirements are lower than the cost sharing available in the QHP marketplace. Additionally, eligibility and enrollment processes for current Essential Plan consumers will not change under the waiver. Consumers will continue to apply for and enroll in the Essential Plan and QHPs through the NY State of Health. New consumers in the Essential Plan will experience the same eligibility and enrollment processes that current consumers with incomes up to 200% of the FPL currently experience.

New York's 1332 Waiver is expected to generate substantial savings for the State and federal governments, while expanding coverage to additional of New Yorkers. The State is requesting that the BHP funding and the savings from foregone premium tax credits be passed through to the State to continue to fund the Essential Plan for the duration of the Waiver. The State projects that the federal passthrough will fully fund the expansion of the Essential Plan to the new eligibility group with no additional funding required from the State for the duration of the Waiver. The State is requesting continued access to the current Essential Plan Trust Fund balance under the Waiver, which will not increase the federal deficit, but will enhance benefits and lower costs for traditionally BHP eligible individuals.

The 1332 Waiver is projected to meet the four ACA Section 1332 guardrails of scope of coverage, affordability, comprehensiveness of coverage, and federal deficit neutrality.

Essential Plan Expansion 1332 Waiver Submission and Review of Public Comments

A draft of the waiver is available for review on the Department of Health's website at: <https://info.nystateofhealth.ny.gov/1332>. For individuals with limited online access and/or who require special accommodation, please call (518) 486-9102 to access paper copies.

The State will accept written comments through March 11, 2023. Individuals wishing to provide written comments may submit them online at <https://info.nystateofhealth.ny.gov/1332> or by mail at:

NY State of Health
Empire State Plaza
Corning Tower
Room 2580
Albany, NY 12237

All comments must be submitted electronically or postmarked by March 11, 2023.

In addition to accepting written comments, the State will be hosting two virtual public hearings during which members of the public may provide verbal comments.

1. Public Hearing Option 1

- a. **Wednesday, February 22, 2023 at 1:00 PM**
- b. Pre-registration by February 20, 2023, is required for anyone wishing to provide verbal comment during the hearing using the following link:
<https://meetny.webex.com/weblink/register/r9b97d4c0bdb3d30931faaa9c44e913e1>.
- c. Individuals who wish to provide comment will need to register with an "SP" in front of their name to indicate they want to speak (ex: SP Jane Doe) when registering for the WebEx meeting.
- d. Individuals will speak in the order of registration. All verbal comments will be limited to five minutes per presenter to ensure that all public comments may be heard.

2. Public Hearing Option 2

- a. **Thursday, February 23, 2023 at 12:00 PM**
- b. Pre-registration by February 21, 2023, is required for anyone wishing to provide verbal comment during the hearing using the following link:
<https://meetny.webex.com/weblink/register/r3769e6dcad0c4d2f9f27fbeee83e2fe7>.
- c. Individuals who wish to provide comment will need to register with an "SP" in front of their name to indicate they want to speak (ex: SP Jane Doe) when registering for the WebEx meeting.
- d. Individuals will speak in the order of registration. All verbal comments will be limited to five minutes per presenter to ensure that all public comments may be heard.

The State will consider all written and verbal comments received and include a summary of the comments in the final 1332 Waiver Application submitted to the Departments.