



## Department of Health

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Governor

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Acting Executive Deputy Commissioner

November 13, 2023

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

The Honorable Chiquita Brooks-LaSure  
Administrator  
Centers for Medicare and Medicaid Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Secretary Becerra and Administrator Brooks-LaSure,

On May 12, 2023, the State of New York submitted its Section 1332 Waiver Application to the Department of Health and Human Services and Department of Treasury. On November 13, 2023 the State submitted an addendum to the waiver application. The waiver seeks authority to expand coverage of New York's Essential Plan to consumers up to 250% of the FPL. If approved, the waiver will be in effect for a period of five years beginning April 1, 2024 through December 31, 2028.

This letter serves as notice that upon the approval of its Section 1332 Waiver, New York is applying to suspend its Basic Health Program and retain the monies accumulated in its trust fund, as proposed in 88 FR 52262, 52542 (Aug. 8, 2023). If CMS makes material adverse changes to the rule between now and its effective date, New York will take the necessary steps to withdraw from the waiver and continue operating its Basic Health Program.

New York's Essential Plan provides affordable, comprehensive, health insurance to more than one million New Yorkers with incomes up to 200% of the Federal Poverty Line (FPL). Last year, New York's Legislature passed and Governor Hochul signed into law, the authority for the Commissioner of Health to expand coverage of New York's Essential Plan to individuals with incomes up to 250% of FPL using a Section 1332 Waiver. The transition of New York's Essential Plan to the Section 1332 Waiver will have no impact on consumers currently enrolled in and eligible for the Essential Plan under the BHP.

Sincerely,

Lisa Sbrana  
Director, Division of Eligibility and Marketplace Integration  
NYS Department of Health



**New York Basic Health Plan (BHP)  
Suspension Application**

*November 13, 2023*

*Submitted by the New York State Department of Health*

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## **Section I: BHP Suspension Request**

The State of New York applied for a Section 1332 Waiver on May 12, 2023 and submitted an update to the waiver on November 13, 2023 that will allow an expansion of the successful Essential Plan (EP). New York’s Essential Plan currently operates under the Basic Health Program (BHP) authority of Section 1331 of the Affordable Care Act (ACA). The EP has been in place since 2015, providing more affordable and more comprehensive coverage to individuals with incomes up to 200% of the Federal Poverty Level (FPL)—generally those who would otherwise be eligible for the Premium Tax Credit (PTC). The 1332 Waiver will allow New York to expand the Essential Plan beyond the statutory population, reaching New Yorkers with incomes up to 250% of the FPL who would otherwise be eligible for subsidized coverage on the marketplace. Once approved, the waiver will be in effect from April 1, 2024 through December 31, 2028.

While the waiver is in effect, New York is requesting a suspension of its current Basic Health Program blueprint, effective April 1, 2024. This suspension is requested to account for two elements of the program. First, maintaining a certified blueprint for the Basic Health Program is part of New York’s without-waiver baseline policy. In the event that the waiver is not in operation, New York must have its without-waiver environment operating for consumers. Second, the 1332 Waiver is, by definition, a time-limited project. At the end of the waiver, if the State or the federal government choose not to renew the waiver, New York will immediately revert back to the Basic Health Program to maintain coverage and affordability. In the interest of reducing the risk of coverage disruptions, and given the administrative burden on both the federal government and the state of the Basic Health Program blueprint and approval process, New York is requesting a suspension of its Basic Health Program for the duration of the waiver and the maintenance of New York’s current Basic Health Plan trust fund, as provided in proposed 42 CFR 600.140.

The current Essential Plan is a “standard health plan” as defined under Section 1331 of the ACA and its implementing regulations (42 CFR 600 Subpart E). Under the waiver, New York will maintain the Essential Plan in direct alignment with the definition of a standard health plan. As such, the Essential Plan will include coverage of all Essential Health Benefits, and additional benefits, such as dental and vision. Any Essential Plan carriers that are defined as insurance companies will be required to operate the Essential Plan at a minimum medical loss ratio of at least 86%.

As described in Section II of this application, the Essential Plan under the 1332 Waiver is expected to meet the 42 CFR 600.140 regulatory requirements for eligibility, benefits comprehensiveness, and affordability.

### ***About the Essential Plan***

Though the State will not be operating a Basic Health Program as described under Section 1331 of the ACA, the Essential Plan under the 1332 Waiver will exactly mirror the Essential Plan

under the BHP and meet the requirements of a “standard health plan” as defined by Basic Health Program statutes and rules.

New York’s Essential Plan covers all 10 essential health benefits in alignment with New York’s EHB benchmark plan, while also covering dental and vision benefits. The Essential Plan provides these comprehensive benefits, with no monthly premium, no annual deductible, free preventive care, and low copayments. The benefit design of the Essential Plan is equivalent to a 98.0 – 100.0% actuarial value (AV) based on CMS’s Actuarial Value Calculator. The Essential Plan offers coverage comparable to Minimum Essential Coverage (MEC).

The Essential Plan is a standardized set of benefits and cost-sharing designs, offered solely to eligible populations by private companies in New York (similar to Medicaid Managed Care).

New York currently funds the administration of the Essential Plan through a state appropriation (\$75 million in State Fiscal Year 22-23). This appropriation is provided to the Department of Health for personnel and contracts to support oversight, compliance, customer service, navigators, IT system upgrades and maintenance, among other administrative functions. This state appropriation would continue under the waiver but these costs may be covered by passthrough funds.

New York’s experience with the Essential Plan under its Basic Health Program demonstrates the importance of making affordable coverage available to low-income consumers. New York recently took steps to both increase the affordability and enhance the benefits for low-income New Yorkers enrolled in the Essential Plan. In June 2021, New York eliminated monthly consumer premiums and added dental and vision benefits with no cost-sharing for individuals enrolled in the Essential Plan. Compared to a QHP, the Essential Plan reduced both premium and out-of-pocket costs for enrollees by more than \$1,600, saving New Yorkers an estimated \$940 million a year in 2022.

The take-up rate in the Essential Plan is in part demonstrative of how critical affordability is in driving enrollment. Among individuals determined eligible for the Essential Plan, take-up is 97%, compared with 47% for consumers determined eligible for QHP. This take-up rate is largely driven by the enrollment and continuous coverage processes in the Essential Plan, which will not change under the waiver. The Essential Plan continues to be very popular in 2023, with over one million enrollees.

The suspension of the BHP and implementation of the 1332 Waiver will not impact the experience for the current enrollees in the Essential Plan. While the formal authority for the program would shift from a Section 1331 program to a Section 1332 Waiver, no eligibility or enrollment processes will change, no premium or cost-sharing will change, no benefits will change and there will be no change in choice of plans due to the waiver. In practice, the operation of the Essential Plan Expansion will be no different than the current Essential Plan experience for this population.

## **Section II: Compliance with Regulatory Requirements**

New York’s request to suspend its Basic Health Plan complies with the regulatory requirements in the 2024 Medicare Physician Fee Schedule final rule released on November 2, 2023 for 42 CFR 600.140. For additional detail, please see the New York Section 1332 Innovation Waiver application at: <https://info.nystateofhealth.ny.gov/1332>. Specifically, the Actuarial and Economic Analysis contains an assessment of the waiver’s compliance with the 1332 guardrails (Comprehensiveness, Affordability, Coverage, and Deficit Neutrality), which also satisfy the requirements for BHP suspension.

### **Eligibility Criteria**

There will be no change in eligibility criteria for current Essential Plan consumers under the BHP suspension, as outlined in § 600.305. The 1332 Waiver will expand eligibility to consumers with incomes up to 250% of the FPL, ages 19 to 64 years.

Eligibility for the Essential Plan will continue to be determined through New York’s single streamlined eligibility system. If a person is deemed eligible for the Essential Plan, the individual will have a choice of plans for enrollment, or will be auto-assigned into a plan if they do not choose one. Enrollment for the Essential Plan is open all year, consistent with New York’s Medicaid and Children’s Health Insurance Program (CHIP). There will be no difference in how and when individuals can enroll in plans once they are determined eligible for the Essential Plan under the 1332 Waiver compared to the BHP.

### **Benefits Comprehensiveness**

The BHP suspension does not impact the comprehensiveness of coverage available. The Essential Plan will continue to provide the same essential health benefits to enrollees, including adult dental and vision benefits, as described in the certified Blueprint. Please see the benefits and cost sharing that will be in place in 2024 for EP 1 through 4:

[https://info.nystateofhealth.ny.gov/sites/default/files/Attachment%20G%20-%20EP%20Benefits%20and%20Cost-Sharing\\_Revised%206%202020%202023.pdf](https://info.nystateofhealth.ny.gov/sites/default/files/Attachment%20G%20-%20EP%20Benefits%20and%20Cost-Sharing_Revised%206%202020%202023.pdf). Benefits for the Essential Plan may be enhanced in the future under the 1332 Waiver compared to the BHP.

### **Affordability**

Affordability for current consumers within the Essential Plan will not change under the suspension, as they will be enrolled into the same plans under the 1332 Waiver, with the same cost-sharing, premiums, and AV. There is no difference in the Essential Plan options for enrollees under the 1332 Waiver compared to the BHP. Please see the tables below for summaries of the cost sharing in the Essential Plan, as reported in the 1332 Waiver application.

**Table 1 - Baseline Without Waiver Average Out-of-Pocket Expenses by FPL, PY 2024 – 2033**

<b>Without Waiver - Scenario C - FPL</b>	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	5 Year	10 Year
<b>Essential Plan - Annual Out-of-Pocket Expenses - FPL</b>												
Below 150%	\$9	\$10	\$10	\$11	\$11	\$11	\$12	\$12	\$13	\$13	\$10	\$11
Over 151%	\$139	\$145	\$150	\$156	\$163	\$169	\$176	\$183	\$190	\$198	\$151	\$168

**Table 2 – With Waiver Average Out-of-Pocket Expenses by FPL, PY 2024 – 2033**

With Waiver - Scenario C - FPL	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	5 Year	10 Year
<b>Essential Plan - Annual Out-of-Pocket Expenses - FPL</b>												
Below 150%	\$9	\$10	\$10	\$11	\$11	\$11	\$12	\$12	\$13	\$13	\$10	\$11
151% - 200%	\$139	\$145	\$150	\$156	\$163	\$169	\$176	\$183	\$190	\$198	\$151	\$168
Over 201%	\$238	\$247	\$257	\$267	\$278	\$289	\$301	\$313	\$325	\$338	\$257	\$286

**Table 3 – 2024 Essential Plan Cost Sharing**

Rate Cohorts	Population	Income (%FPL)	Ages	Premium	Deductible	Cost Sharing	Max Out-Of-Pocket	Estimated Actuarial Value <sup>1</sup>
EP 1	Non-Medicaid	151 – 200%	19-64	\$0	\$0	Yes	\$360	98.0%
EP 2	Non-Medicaid	139 – 150%	19-64	\$0	\$0	RX only	\$200	99.7%
EP 3	Aliessa	100 – 138%	19-64	\$0	\$0	RX only	\$200	99.7%
EP 4	Aliessa	< 100%	19-64	\$0	\$0	No	\$0	100.0%

**Enrollment Estimates**

With the expansion of the Essential Plan to lower income residents, more consumers are expected to be covered under the 1332 Waiver during BHP suspension compared to the baseline who would otherwise be uninsured due to boosted advertising and outreach activities. Please see Tables 4 and 5 below for Essential Plan enrollment estimates with- and without-waiver from the 1332 waiver application.

**Table 4 - Baseline Without Waiver Average Annual Enrollment by EP Cohort, PY 2024 – 2033**

Baseline - Scenario C	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
<b>Essential Plan Enrollment</b>	<b>1,365,381</b>	<b>1,307,461</b>	<b>1,317,042</b>	<b>1,338,169</b>	<b>1,359,656</b>	<b>1,381,489</b>	<b>1,403,672</b>	<b>1,426,211</b>	<b>1,449,113</b>	<b>1,472,382</b>
EP1	573,460	549,133	553,158	562,031	571,056	580,225	589,542	599,009	608,627	618,400
EP2	163,846	156,895	158,045	160,580	163,159	165,779	168,441	171,145	173,894	176,686
EP3	95,577	91,522	92,193	93,672	95,176	96,704	98,257	99,835	101,438	103,067
EP4	532,498	509,910	513,646	521,886	530,266	538,781	547,432	556,222	565,154	574,229

**Table 5 - With-Waiver Average Annual Enrollment by EP Cohort, PY 2024 – 2033**

With Waiver - Scenario C	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033
<b>Essential Plan Enrollment</b>	<b>1,459,261</b>	<b>1,422,531</b>	<b>1,427,282</b>	<b>1,449,018</b>	<b>1,471,121</b>	<b>1,493,577</b>	<b>1,516,390</b>	<b>1,539,566</b>	<b>1,563,111</b>	<b>1,587,032</b>
EP1	575,666	557,117	562,735	571,807	581,034	590,411	599,938	609,620	619,459	629,456
EP2	164,476	159,176	160,781	163,373	166,010	168,689	171,411	174,177	176,988	179,844
EP3	95,747	91,696	92,371	93,853	95,361	96,893	98,449	100,031	101,638	103,271
EP4	533,450	510,880	514,636	522,895	531,295	539,831	548,503	557,315	566,268	575,365
200%-250% FPL Population	89,922	103,662	96,760	97,090	97,421	97,754	98,088	98,423	98,759	99,096

**Reporting**

New York will continue to submit an annual report in order to document the interest earned and to provide assurance that the coverage provided to BHP eligible individuals meet the federally required standards. As outlined in 42 CFR 600.140, this report will include:

- (1) the balance of the BHP trust fund and any interest accrued on that balance;

<sup>1</sup> Actuarial values were estimated across rate cells using a generic benefit model with considerations for the underlying service category distribution for Rate Cohort 1.

- (2) an assurance that the coverage provided to individuals who would be eligible for a BHP under § 600.305 continues to meet the standards described in § 600.140(b)(1)(i) through (iii); and
- (3) any additional information specified by the Secretary at least 120 days prior to the date that the annual report is due.

The State will also submit the data necessary to complete the BHP payment reconciliation process within 12 months of the effective date of the suspension. The State is confident it can meet this requirement.