

New York 1332 Waiver Application Updates
Public Hearing
November 17, 2023 at 10:00 AM

The following is a transcription of the Public Hearing held by the New York State of Health on November 17, 2023 about New York's proposed updates to its Section 1332 Waiver. The transcribed presentation and comments were lightly edited for readability.

Danielle Holahan: Good morning. Thank you for your patience as we are getting some logistics sorted out. Could you let folks who want the Spanish interpretation how to connect? And we're showing it on the screen here with the phone number at the bottom.

Juan Maranon: [Provided instructions in Spanish on how to dial into the interpretation line.]

Danielle Holahan: Thank you, Juan. Good morning, everyone. Again, thank you for your patience. We are here to conduct our public hearing on New York's Section 1332 waiver application. I am Danielle Holahan, Executive Director of New York State of Health. I am joined here with Sonia Sekhar, our Deputy Director of New York State of Health, and Georgia Wohnsen with the Office of Health Insurance Programs. On the Spanish line, we're joined by Tatiana Gomez and Joel Santiago Brito Dela Cruz. So, thank you all for joining.

I want to just make a couple of remarks at the top, and then I'm going to pass it over to Georgia to do additional logistics. The first thing to say is that we acknowledge that there was short notice given for today's hearing. I know there are several people who are providing comment virtually, and we appreciate that. We have also added a second public hearing, which will be on November 28th, to allow for additional time with the materials and to provide comment on that day as well. So, thank you again for joining.

And I'll just do the agenda and then I will pass it to Georgia. We'll start with some logistics. I'm going to walk through a summary of New York's 1332 waiver application. I'm going to pass it to Sonia who will walk us through the changes since the May application was submitted, which is really the goal of today's public hearing, to walk through what's new since the original application submission. And then we'll open it for public comments. So, with that Georgia, do you want to walk through the logistics for today?

Georgia Wohnsen: Sure thing. Good morning, everybody. So, for our in-person attendees today, we ask that you please sign in and confirm with us in person if you'll be providing public comment today. And for our virtual attendees, for those that have already registered and included the speaker designation with their name, you are on

our list of public speakers. After those speakers have their chance to provide comment, we'll then open up the mic to other participants who may want to give comment as well. So, please enter your name into the chat if you decide that you'd like to give a comment or ask a question.

Additionally, we also have American Sign Language, ASL, interpreters available virtually today with us. Their videos will be pinned to the screen. If you're having any issues or questions about how to make sure you're viewing our ASL interpreters, please also submit those through the chat.

Danielle Holahan: Great. Thank you, Georgia. All right, I'm going to provide a little background just to bring us up to date before we jump in on what has changed. So, if we could advance to the next slide.

By way of background, the fiscal year 2023 enacted budget in New York State expanded the eligibility for the Essential Plan from the current 200% of poverty level up to 250%. And the Essential Plan has been operating under the Basic Health Program regulations, which limits eligibility to 200% of poverty. Then in the fiscal 2024 executive budget, the expansion of the Essential Plan eligibility to 250% was authorized using a Section 1332 waiver.

Section 1332 waivers of the Affordable Care Act allow states to waive parts of the Affordable Care Act to pursue innovative strategies for providing residents with access to high quality, affordable health insurance coverage. States submit 1332 waiver applications to the Department of Health and Human Services and the Department of Treasury for review and approval. Next slide.

We originally submitted our 1332 waiver application on May 12th. And just to reiterate what was contained in the original application, we were very clear that current Essential Plan members, those individuals up to 200% of poverty, would experience no change under the waiver. So that was very clear and very important to us. There would be no changes for anybody who is currently eligible for the Essential Plan under the Basic Health Program structure. Consumers between 200 and 250% of poverty are currently eligible for Qualified Health Plans with advance premium tax credits. Under the 1332 waiver, we will allow those individuals to be eligible for the Essential Plan. And the original waiver application included a \$15 monthly premium for those members with incomes between 200 to 250% of poverty. Individuals below 200 have no premium.

For consumers above 250% of poverty in the original waiver application, we had indicated that premiums in the individual market were estimated to increase due to the migration of the expansion population, the 200 to 250 population out of the individual market, which would have potentially increased the out-of-pocket costs for those consumers remaining in that individual market. Also in the original

waiver application, the implementation start date was intended to be January 1st of 2024. Next slide.

To just to go over a few basics on 1332 waiver funding. 1332 waivers are required to be deficit neutral to the federal government. And in New York's waiver application, we are requesting federal savings from foregone premium tax credits in the individual market for individuals between 200 and 250% of poverty, the expansion population, and federal spending on the Basic Health Program be used to fund the costs of the 1332 waiver program. It's estimated that the federal funding will continue to fully fund the Essential Plan with this expanded eligibility up to 250% for the full five years of the waiver. So, we are meeting the deficit neutrality guardrail.

I'm going to just walk through again some reminders on the timeline. Back in February, from February 9th to March 11th of 2023, we released a draft of our 1332 waiver application, and we held a 30-day state public comment period, which included two public hearings and a tribal consultation. On May 12th, we submitted our application based on comments we received at those public hearings to the Departments of Health and Human Services and Treasury. On June 6th, the departments sent us a completeness letter. And then between June 6th and July 5th, the federal government held a 30-day public comment period. Later in the summer, between August 23rd and the 30th, the departments again held another public comment period, this time for seven days to review one change that we made outlining the proposed Insurer Reimbursement Implementation Plan. For this plan, which we'll talk a bit about today, the intention is to negate the premium increases in the individual market that I mentioned before. Originally the application assumed there would be a premium impact in the individual market. The introduction of this Insurer Reimbursement Implementation Plan, or IRIP, would allow us to go forward without premium increases in that individual market. So, the federal government opened a seven day public comment period on that proposal.

Then moving forward in late September, on the 29th, the Department of Health sent a letter to the departments requesting that they pause the review of our waiver application so that we could submit an updated application. And as we outlined in that pause letter, this was related to the pending federal regulations that were related to the Basic Health Program. And so that was where we were at the end of September, and those regulations were finalized in early November. And so, we have requested to resume review of our application. On the 14th, earlier this week, we submitted our updated waiver application, or waiver addendum, and our request to suspend the Basic Health Program for the duration of the 1332 waiver.

That submission on November 14th and the changes outlined in there are what we're here today to walk through. So, I'm going to now turn it to Sonia and to walk through what's in the addendum. Thank you.

Sonia Sekhar: Good morning, everyone. Thank you for joining us on a Friday morning for this public hearing. So as Danielle noted, this section will cover the changes we've made to our waiver application since we submitted it on May 12, 2023. Next slide.

So the policy changes we've made are based on feedback we received from public comments as well as the federal review process. The first change is the addition of the Insurer Reimbursement Implementation Plan that was submitted in August 2023. The second is the elimination of the premium for the new EP consumers with incomes of 200 to 250% of the federal poverty level. And the third change is the delay of the implementation start date of the waiver from January 1st to April 1st, 2024. In addition, we've made updates the application assumptions and data that have changed since the initial application was submitted in May, and some of those changes include updating for the approved premium rates on the individual market and for the Essential Plan for 2024. And we've also updated enrollment numbers based on more recent actuals. Next slide.

The first change that we wanted to go through is the addition of the Insurer Reimbursement Implementation Plan. So, just to give you some background on this, you may recall from our May 12, 2023 application that we estimated a small increase in individual market premiums because we'd be moving a relatively healthy population from the individual market, the group with incomes between 200 and 250% of FPL to the Essential Plan.

When the New York Department of Financial Services started the rate filing process back in May, they requested that individual market issuers submit two sets of rates for 2024. One set that assumed the EP expansion proceeded under the waiver and another set that assumed that it didn't. So, as we were still moving through the waiver process this summer, DFS needed to approve rates for 2024. They approved the lower rates because the waiver had not been approved at that time. And we had also started contemplating the Insurer Reimbursement Implementation Plan, which would allow us to approve the lower rates to keep insurers whole on this transition of the healthier population. Next slide.

So we developed the IRIP to address this difference in premium rates between the with waiver and without waiver premium rates. Under the IRIP we will pay insurers the difference between the premium rates proposed with the waiver and without the waiver, rather than having them pass that cost on to consumers, using federal passthrough funds. So, the approach to calculate that payment is that DFS will calculate the impact of the premium loss for insurers on a quarterly basis associated with the migration from the individual market to the Essential Plan starting in April 2024, when we intend to start implementing the waiver. The estimated cost of this program is approximately \$45 million in 2024, and it's estimated at \$60 million a year thereafter.

So on this slide, we're covering the second change that we made to the waiver, which is eliminating the \$15 monthly premium. By not implementing a \$15 monthly premium we will be consistent across the Essential Plan levels by having a \$0 monthly premium for all enrollees and \$0 deductible for all enrollees. There is some variation in the maximum out-of-pocket costs for each level depending on a member's income. So for the newest group, the maximum out-of-pocket costs is \$2,000. For the Essential Plan 1 group, which is the next highest income tier, there is a max out-of-pocket of \$360 a year. And for the remaining groups, it's \$200 a year. Next slide.

The last change that we're implementing is changing the implementation date of the waiver from January 1st to April 1st of 2024. As Danielle noted earlier, this is due to a regulation that has a dependency on our ability to suspend our Basic Health Program. That regulation was only finalized in early November; I believe it was November 2nd. So once that was completed, our open enrollment activities were already well underway and we were not able to pivot to implementing the waiver for January 1st.

So the process for transitioning the population midyear from Qualified Health Plans with financial assistance to the Essential Plan is that in February of 2024, we will identify individuals who have incomes between 200 to 250% of the federal poverty line with an active Qualified Health Plan eligibility and enrollment, and we will transition them to the Essential Plan. On the marketplace, we have near alignment in issuer participation across all program types. And this is consistent with current practice on the marketplace when members transition from Qualified Health Plans or between public programs. We will map individuals to their same issuer's Essential Plan product where we know there is significant overlap and provider participation.

Consumers will be informed of this change by March 2nd. They'll receive an updated eligibility notice about their transition to the Essential Plan for April 1st. We will also provide additional outreach through enrollment assistors, which most of our consumers use. We'll send them text messages and emails as well to make sure that consumers are well informed about this transition. And as I noted before, current QHP enrollees will be mapped to their same insurer's Essential Plan product where available. In the case of a very small number of enrollees where their QHP issuer doesn't participate on the Essential Plan, we will follow Medicaid managed care auto assignment process to map them to the Essential Plan. In addition, we'll be training all of our staff on the new Essential Plan product.

Just to be clear, the application process is not changing as a result of this waiver implementation. The only thing that changes from a consumer perspective is what individuals are actually eligible for. And so, the training for both enrollment assistors and our customer service staff will focus on eligibility results and the new products benefits. Lastly, as I noted before, we're going to do extensive outreach

and education to promote this Essential Plan expansion in addition to direct consumer information through emails and text messages. We'll also be engaging in an advertising campaign to make sure that eligible individuals are aware of this new benefit. Next slide.

So this slide covers the impact of the changes that we're making from the perspective of complying with the 1332 waiver guardrails.

The first guardrail relates to comprehensiveness of benefits, which means that under the waiver, we have to make sure that the benefits consumers receive are at least as comparable as they would be without the waiver. And based on the application, you'll see that consumers who move from Qualified Health Plans to the Essential Plan will experience increased benefits with coverage under the Essential Plan.

The second guardrail relates to affordability and is essentially a check to make sure that consumers will not be spending any more under the waiver as they would be without the waiver. Again, as you'll see in the application, consumers will experience an average annual savings as a result of the waiver of nearly \$5,000, which for this income group is approximately 12% of their income. So, it's a significant savings for consumers.

From a coverage perspective, the guardrail requirements are that we are covering at least as many individuals under the waiver as compared to without the waiver. And for this guardrail, we look at the population from two perspectives. The first is that we are transitioning existing consumers. About 70,000 consumers between 200 and 250% of FPL will transition from QHPs or Qualified Health Plans to the Essential Plan for 2024. And then, due to the increased affordability of this product compared to peers, we also expect an additional 21,380 new consumers who would have otherwise been uninsured to gain coverage in 2024. So, the overall impact from an enrollment perspective is that across the Essential Plan and Qualified Health Plan markets, a 1.3% increase in enrollment in 2024, and that eventually ramps up to about a 3% increase in 2025 and beyond.

The last guardrail is the federal deficit neutrality guardrail, which essentially says that the federal government cannot spend more under the waiver compared to without the waiver. And based on our waiver application, we do estimate a savings to the federal government. We are asking for the majority of those savings as passthrough to implement the waiver itself. So, the State is requesting \$65.8 billion in federal savings to be passed through to New York to fund the Essential Plan expansion under the waiver. Next slide.

Here are the key dates for the waiver process. As Danielle went over already, we submitted our updated waiver application on November 14th. The federal public comment period actually opened today, on November 17th. We are holding our first

public hearing today. We're holding a virtual hearing on the 28th. The federal public comment period will actually close on December 2nd and we'll update this slide to reflect that date. And our target to make sure that we're able to implement the waiver on time is a federal approval by the end of January. And again, our targeted waiver implementation start date is April 1, 2024.

Danielle Holahan: Great. Thank you very much. Okay, we're going to open it to public comment at this time. And I'm going to ask Georgia to let folks in. We've gotten many requests to provide comments. So, we'll turn to you.

Georgia Wohnsen: Fantastic. Okay. Just a couple reminders before we transition into our public comment period. Commenters will be limited to five minutes. We are going to start with our commenters who have pre-registered, those in the room and virtually. And then after that, as we said before, we'll open up the line to others who may want to give comments. So, if you've decided that you'd like to provide public comment today and have not already registered, just drop us a line in the chat function and enter your name and we will plan to call on you. I'm going to start with our first registrant, Luisa. I'm going to go ahead and have you unmute.

Luisa Cuautle: Thank you. So, my name is Luisa. I work with Make the Road New York. I'm actually not going to be presenting comment today, but I am going to be interpreting for Sonia Perez who is one of the members from our organization. And I will be providing testimony on behalf of Dolores Juarez, who was supposed to be providing her testimony today but had an emergency. And with that being said, I'll just provide Dolores' testimony first and I'll be saying it in English, although she speaks Spanish.

So, my name is Dolores Juarez. I am a member of Make the Road New York from Staten Island. Today, I'm here to ask the state to amend the 1332 waiver to include all immigrants, regardless of immigration status. I have suffered from diabetes for a long time. However, due to not having health insurance and due to the high cost of medicines, I have not been able to start my treatment allowing this disease to progress and risking the integrity of my health. Overall, I haven't had a steady job since 2020 because of the pandemic and treatment costs about \$1,500 a month at a pharmacy and additionally \$450 a month at the hospital. How can a New Yorker like myself, a stay at home mother, access diabetes treatment when prices are so extremely high and I have no income? I'm not the only one in my community who faces these challenges. We are 255,000 New Yorkers without access to health insurance due to our immigration status.

I am here today to ask the State to amend the 1332 to waiver to be able to access federal funding to provide health insurance to all immigrants regardless of immigration status, and also to include DACA recipients up until 250% of the federal

poverty level. DACA recipients make up a big part of our community. There are people who I know, many DACA recipients, and they also deserve access to the benefits that the 1332 waiver would be offering.

Thank you very much for the opportunity to speak, and that is from our member Dolores Suarez, who unfortunately had an emergency and could not be presenting her testimony today. So, thank you very much.

Danielle Holahan: Thank you very much for providing that comment on behalf of Dolores. Okay. We'll go ahead with Melinda. Thank you. And then we'll come back. So, Melinda, we're going to open your line.

Georgia Wohnsen: All right. I don't think we have Melinda on the line at this time, so maybe we will go back to Sonia. Having just a little connection issue, it looks like Sonia's line is unmuted. Sonia, if you're able to chime in.

Sonia Perez: [Comment provided in Spanish.]

Danielle Holahan: Thank you.

Luisa Cuautle: I think if I can speak, I'm going to go ahead and translate that. I was having some wifi issues and I will be repeating it for her right now.

My name is Sonia Perez. I'm a member of Make the Road New York from Brooklyn. I'm here today to ask the State to amend the 1332 waiver to ensure that all immigrants, without importing their immigration status, have access to health insurance. I worked tirelessly as a street vendor in the city of New York, and I find myself having the difficulty of having to choose between buying a plate of food and choosing my health care because of high bills. The fact of the matter is that health care is really inaccessible because of my immigration status as an immigrant. I'm not eligible because of my immigration status, and I have Medicaid, emergency Medicaid, and I only use it for emergencies. It is true that I can only use it for emergencies and I do not receive preventative care. I am asking for the State to amend the 1332 waiver to include immigrants. I'm not speaking on behalf of myself only. I am speaking on behalf of more people as well. In my community there are so many people who need this. So, I ask once again to the State, please amend the 1332 waiver to include immigrants in your request this time. Thank you.

Danielle Holahan: Thank you very much for your comment, Sonia. We appreciate you sharing your story and your comment. Are we turning to Ursula? Wonderful. Ursula, we're going to open your line.

Ursula Rozum: Great. Thank you so much. My name is Ursula Rozum. I'm the health care lead for Citizen Action of New York. We're a statewide member led organization

with seven chapters across New York in Buffalo, Rochester, Utica, Albany, Binghamton, Hudson Valley and New York City. And we're here to comment briefly on the 1332 waiver proposal.

And first off, we're pleased to see that the waiver proposal eliminates the \$15 monthly premium premiums. Even ones that are considered low by some can still be a burden for patients and health care consumers who are making those weekly choices about whether to use their limited income for rent or food or paying the insurance, which, let's face it, the insurance products available to working New Yorkers are limited with high co-pays, high deductibles which do not make them easy or simple or appealing to consumers. So, we're very pleased to see the elimination of the \$15 monthly premium. We think this will really help to close coverage gaps.

We also believe that CMS and New York State policymakers should revise the waiver proposal to use part of the surplus to cover immigrant New Yorkers. As an organization, we believe that health care is a human right, and we want lawmakers and state agencies to use this opportunity to advance the right to health care in our state by expanding coverage to immigrant New Yorkers, the largest group of uninsured residents. And we ask that you include funding for DACA recipients to enroll in the Essential Plan, regardless of whether the federal DACA regulation is filed in April or not.

Really briefly, I'll say for the record that Article 17, Section 3 of the State Constitution from 1938 reads that the protection and promotion of the health of the inhabitants of the state are a matter of public concern. And provision therefore shall be made by the State and by such of its subdivisions, and in such a manner, and by such means as the Legislature shall from time to time, determine. So basically, lawmakers and state agencies have a constitutional duty to protect and promote the health of New Yorkers. And this waiver application is an opportunity to do that. So, we're asking that the waiver proposal be revised to expand insurance for immigrant New Yorkers. Expanding coverage to immigrant New Yorkers is in line with thousands of comments that were submitted in the first half of 2023. So, our primary message is to use this opportunity to revise the 1332 waiver proposal to help bring us closer to making health care a right in our state by expanding coverage to immigrant New Yorkers. Thank you.

Danielle Holahan: Thank you for your comment. We appreciate that. Okay. Jocelyn.

Jocelyn LeBron: Hi, everyone. Good morning. My name is Jocelyn LeBron and I am a health care advocate with the Health Care Education Project, a joint initiative of 1199 SEIU, United Health Care Workers, East and Greater New York Hospital Association. I am here today to speak on behalf of the need to revise the 1332 waiver to provide health care coverage for immigrants.

As an advocacy organization, our mission is to protect and expand access to quality, affordable health care so that our communities have the tools and resources necessary to succeed. Revising the waiver to include individuals who don't qualify due to their immigration status does exactly this. The adverse results of the lack of comprehensive health coverage perpetuates continuous health inequities in our communities, and this cannot continue. The revised estimates done by the State indicate a surplus of \$7.8 billion that can easily be used to cover the 150,000 immigrants per year without impacting the \$5.8 billion already allocated for providers and plans.

As an advocate working in the Bronx, I understand the importance of having access to comprehensive health coverage for the members of the communities I work with. As the Bronx has been long afflicted by poor health outcomes, the utilization of emergency Medicaid for the immigrant population in the Bronx becomes a last resort, only accessible to treat severe illnesses or life threatening circumstances. But it does not provide access to preventative care, which is urgently needed to improve health outcomes. These are working people without insurance who pay out of pocket for large medical debt or choose to go untreated. I have worked with families who are in need of mental and behavioral health services but are not able to obtain these services because the few organizations that provide mental health services either don't have funding to provide comprehensive health services to uninsured populations or have a long wait list for treatment.

New York has long led by example when it comes to providing access to quality, affordable health care. And to remain leaders in health care, we must provide health care coverage to the 245,000 uninsured New Yorkers between the ages of 19 to 65 who are excluded from federally funded health insurance. Revising the 1332 waiver to cover immigrants will prevent vulnerable individuals from falling through the cracks in New York's excellent health care coverage record. Moreover, it will save New York the millions spent on emergency Medicaid while providing comprehensive coverage that saves lives. At a time when our health care system is in grave need of a major investment, providing health care coverage to the largest uninsured population in New York will begin to address the barriers to access in our health care system. In the face of the ongoing pandemic, health insurance coverage promotes economic and social stability, while ensuring that our health care providers can continue to provide innovative, equitable care. I strongly urge to revise the 1332 waiver to cover immigrants as it will provide access to crucial, comprehensive health coverage to our vulnerable communities. Thank you for your time.

Danielle Holahan: Thank you very much for your comment.

Georgia Wohnsen: So, I don't see Melinda on the line, but I do have a phone number here that's unassigned. And maybe I will just unmute that line and if that's Melinda,

please chime in. Otherwise, anybody else who would like to submit or offer a comment, we'd ask you to indicate that in the chat and we'll open your line.

Danielle Holahan: Okay. So, we're not seeing any other individuals wishing to comment today. And we'll just remind everybody that the materials are posted to our website. CMS also opened their public comment period, and that information is on the screen, including the email address where written comments can be provided. We will also send detailed information out about the second public hearing on November 28th to be held virtually. And we look forward to your participation and more of your colleagues participating in that hearing. So, thank you again for your time today and your patience with our logistical challenges. And we'll be back on the 28th. Thanks again.