

**New York Draft 1332 Waiver Application
Tribal Consultation
February 28, 2023 at 2:30 PM**

The following is a transcription of the Tribal Consultation held by the New York State of Health on February 28, 2023 about New York's Draft Section 1332 Waiver. The transcribed presentation was lightly edited for readability.

Danielle Holahan: Good afternoon. Thanks so much for joining us today. My name is Danielle Holahan. I'm the Executive Director of New York State of Health Marketplace, and I'm joined by my colleague Sonia Sekhar, Deputy Director of New York State of Health, and several of our colleagues on the New York State of Health team, as well as colleagues from Deloitte Consulting—one of our consultants on this project.

Thank you again for joining us today for the Tribal Consultation to discuss New York's 1332 Waiver Application. There's been great interest in the waiver, and we're eager to hear your questions and comments today.

As you know, last year's executive budget and enacted budget included the authority for the Commissioner to seek a State Innovation Waiver. Since then, we've been working on our waiver approach and analysis, and we are fortunate to have the help from our actuaries at Deloitte Consulting and subject matter experts from the Urban Institute and Manatt Health Solutions.

In addition, over the past year, we've been working with those colleagues, and we've also been in discussion with our colleagues at the Federal government, the Centers for Medicare and Medicaid Services, on our approach.

On February 9th, we posted our Draft Waiver Application and Draft Actuarial Analysis, and we're going to walk through those at a high level today. We're going to open for questions, which you can put in the chat. And then, of course, we will open for public comment. We appreciate your participation today. There is also the opportunity to provide comments in writing through the New York State of Health website, and we will include the links at the end of this slide deck. The public comment period opened on the 9th and runs through March 11th. We've already received well over 400 written comments, and we conducted two hearings last week in which we received a number of comments as well. The comment period will remain open through March 11th, at which time we will compile and review all of the comments received, discuss internally, and then submit an updated application to CMS. Our goal is to receive CMS approval by the end of August so that we have the opportunity to implement this expansion in January of 2024.

We're going to start moving through the slides. I'll just quickly cover this first one, the agenda today. I'll actually cover the about public hearing and comment instructions and an overview of Section 1332 Waivers, and then I'm going to turn it to Sonia who's

going to walk through the specifics of New York's Waiver Application. And then we'll open it for public comments and some closing remarks.

So just for some of the logistics, we are conducting these public hearings virtually in compliance with social distancing guidelines due to COVID-19 and in alignment with approved CMS exceptions to satisfy our public hearing requirements. We're holding two virtual public hearings. As I mentioned, we held those last week and today's Tribal Consultation, and the purpose of these hearings is to solicit comments on our Draft Waiver Application.

A recording and transcription of all the public hearings will be made available on New York State of Health website at <https://info.nystateofhealth.ny.gov/1332>. We'll post all these materials within 5 to 7 days of the hearing, and we have made available language translation, which was used at the last two hearings. Finally, the public may submit comments online through March 11th. And as I said, we will consider all the comments received and then the goal will be to submit our Final Waiver Application to both the U.S. Departments of Health and Human Services and Treasury.

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For today's purposes, if you have a question or comment, we ask that you type your name and question into the Q&A feature on the Webex. You can also use the raise hand feature.

And after we complete the presentation, we'll take both questions and comments. But again, it's helpful for our records if you include your name and organization in the Q&A.

Okay, so the next slide I'm going to walk through some high-level details. If you could advance, thank you, and then to the next one.

Section 1332 is a provision of the Affordable Care Act that gives states the opportunity to waive certain provisions of the Affordable Care Act in order to pursue innovative strategies for providing residents with access to high quality and affordable health insurance while retaining the basic protections of the Affordable Care Act. States, as I mentioned, submit 1332 Waiver Applications to two departments, the Department of Health and Human Services and the Department of Treasury. Waivers are approved for up to five years, and there's the option to renew for another five years.

As part of these waiver applications, states may request to redirect Federal Savings, and in our case, New York will be. As Sonia will walk through, we'll be requesting to redirect to Federal funding streams. The first is the Federal support that goes towards tax credits lowering the cost of Qualified Health Plans, and the second is the Federal subsidy that now funds our Basic Health Program, or the Essential Plan. The request will be to redirect or repurpose those funds for the purposes of our waiver, and that redirected funding is referred to as "passthrough funding." And there's additional

flexibilities associated with passthrough funding. And we'll talk about why we're seeking to do this, and what we're seeking to do with that flexibility.

To date, 17 states have received approval to implement 1332 Waivers, and we list the number of states here. Many of these include reinsurance programs, but I will call out Colorado and Washington which more recently received 1332 Waiver approval to expand coverage in their states. Every application is different, but those are the two that maybe look most similar to what New York is seeking to do.

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I want to walk through what are referred to as guardrails. There are certain requirements, or guardrails, associated with 1332 Waivers that a state must meet. They're listed here, and we will demonstrate through our application that we believe our approach meets all four of these guardrails. The first is around comprehensiveness. We need to demonstrate that our waiver approach is providing coverage that is at least as comprehensive as the coverage that is provided absent the waiver. The second is on affordability, where the waiver must provide protections for consumers against excessive out-of-pocket spending. And the coverage provided through the waiver must be at least as affordable to consumers as the coverage absent the waiver. The next guardrail is around coverage. The waiver must offer coverage to at least a comparable number of residents as absent the waiver. And ideally, in our case, we're hoping to extend coverage to more New Yorkers. And similarly, we're intending to make coverage significantly more affordable to New Yorkers. So those are the two key guardrails for us. And the 4th one is on deficit neutrality, where the waiver must demonstrate that we are not increasing the Federal deficit. We can repurpose Federal funding with additional flexibility, but we cannot cost the Federal government any more than they're spending today on those two funding streams.

The next slide just lists the components of a 1332 Waiver Application, which we have prepared in draft form. The Waiver Application must contain a comprehensive description of the proposed program, evidence of enacted legislation and authority to implement the program—and we'll walk through these in a few minutes. We will list the provisions of the law that we're seeking to waive and why, a timeline for implementation of the waiver program, an actuarial and economic analysis which includes data and assumptions for both 5- and 10-year projections that demonstrate the compliance with the four of statutory guardrails I just walked through. That analysis, as I mentioned, is posted on our website.

Additional components include a variety of information requests pertinent to the waiver description of reporting and how we will meet the reporting requirements, and then finally, evidence of compliance with the public notice comment and tribal consultation requirements—which of course is part of what we're here to do today. So, as I mentioned earlier, we will compile all the comments that we received both through the hearings we did last week and today's consultation and those comments we receive in

writing and respond to those as part of the application that we submit to CMS and Treasury.

So that's a high-level summary of what is the 1332 Waiver. I'm going to turn it to Sonia who's going to walk through the specifics of New York's approach. And then we will go from there and take your comments and questions.

Now, next slide please.

Sonia Sekhar: Building on New York's extremely successful Essential Plan program, which started with under 400,000 enrollees in its first year and now has over 1.1 million enrollees.

The goal of the waiver is to expand the Essential Plan so we can further improve affordability for New Yorkers with incomes up to 250% of the Federal Poverty Line. This will reduce the number of uninsured, low- and moderate-income New Yorkers who do not purchase coverage due to the cost.

By law, the waiver, as Danielle's pointed out, must be deficit neutral for the Federal government, and we will be using the funding that the Federal government would have been spending without the waiver on the waiver population instead. We have also asked the Federal government for continued access to the Essential Plan Trust Fund, which has a surplus balance now.

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So, during last year's budget, which was State Fiscal Year 2022 to 2023, the Department of Health was given authority to apply for a Section 1332 Waiver as well as for the expansion of the Essential Plan program. That is what we're presenting here today. As required by CMS, we have been meeting and planning for the submission of the Waiver Application since last summer. And this year's proposed budget language more explicitly proposes to change the authority for the Essential Plan from Section 1331 of the Affordable Care Act to Section 1332 of the Affordable Care Act.

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I think many of you are familiar with the Essential Plan, but just in case you aren't, currently the Essential Plan is health insurance for residents aged 19 to 64 with incomes up to 200% of the Federal poverty line. Essential Plan members have access to comprehensive coverage, including vision and dental with no premiums, no deductible, and relatively low cost-sharing. New York's Essential Plan is designated as a Basic Health Program under Section 1331 of the Affordable Care Act. It provides an alternative to Qualified Health Plan coverage for eligible consumers. As mentioned earlier, it has proven a tremendous success in New York with over 1 million enrollees today, and we also think the affordability has played a key role in cutting our uninsured rate in half from 10 to 5 percent.

As a Basic Health Program, New York receives annual Federal funding for the program cost of the Essential Plan. And at this point in time, all of the Essential Plan program costs are fully funded by Federal dollars through the Essential Plan Trust Fund. So, this slide helps establish the case for why we want to switch the authority of the Essential Plan by showing its Federal funding trajectory. Because Federal Essential Plan payments are tied to commercial premiums that are rising faster than Essential Plan program costs, by switching the authority of the program from the more restrictive Section 1331 of the Affordable Care Act to Section 1332, we're able to use this annual surplus with more flexibility, like through this coverage expansion.

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This slide shows, the existing Essential Plan eligibility levels, premium and cost-sharing at a high level. So today, for all of these Essential Plan levels, individuals with incomes up to 200% of the Federal Poverty Line have no premium, no deductible, and the out-of-pocket max goes from about \$200 at the lower income levels up to \$2,000. And then at the bottom of this slide, we show the proposed premiums and cost-sharing for the new Essential Plan level, which we're calling Essential Plan 200-250. For these members, they'll have a monthly premium of \$15, no deductible, and a \$2,000 dollar max out-of-pocket.

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On this slide, we are covering how the waiver will impact the existing Essential Plan consumers and new consumers.

First of all, we want to be very clear that nothing changes for existing Essential Plan members. They will apply for coverage and enroll in the same way they do today. We don't anticipate any changes in health insurer participation either. For new members in the Essential Plan, this will be very similar to our original transition when the Essential Plan was first introduced in 2016. So, during our annual open enrollment period, which usually starts in October from a notice perspective, we will flip these members from Advanced Premium Tax Credit eligibility to Essential Plan eligibility. And the main change to these new members will be the actual premiums they pay and the cost-sharing, which will be significantly lower than what they're paying today.

As you may know, there have been available enhanced Advanced Premium Tax Credits under the American Rescue Plan and now authorized under the Inflation Reduction Act. And while they've done a lot to help with premiums, there's still significant cost-sharing for members. Under the waiver, affordability for both premiums and cost sharing for this population of individuals with incomes up to 250% of the Poverty Line will increase substantially. We estimate that they'll save an average of about \$4,200 a year but there's a range of \$3,400 to \$8,900, depending on the plans they actually select.

I also wanted to flag that current and new Essential Plan members would benefit from enhancements that are currently being considered in the budget to reduce cost sharing, enhance access to providers and access to social determinants of health and behavioral health services.

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So here we cover the impact of the waiver from an enrollment perspective. Overall, the waiver will increase total enrollment in the Essential Plan, and by extension, it will increase overall total health insurance coverage in New York State—which as Danielle mentioned earlier, is an important guardrail for 1332 Waivers.

Under the waiver we estimate that over 69,000 consumers with incomes above 200% up to 250% of the Federal Poverty Line who would have otherwise enrolled in a Qualified Health Plan are expected to enroll in the Essential Plan instead in 2024. We also estimate that over 20,000 new consumers who would have otherwise been uninsured are expected to enroll in coverage through the Essential Plan in 2024. Overall, we estimate that the Essential Plan and individual market coverage will increase under this waiver and reach a steady state of about 2% higher than what it would have been without the waiver by 2026.

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So, for the duration of the waiver, we are requesting that our current Basic Health Program is suspended under Section 1332. This is primarily technical so that the State is able to expand the Essential Plan to new populations under Section 1332 of the Affordable Care Act. Again, current Essential Plan members will not experience any changes as a result as we mentioned before.

In our Waiver Application, we have to say what provisions of the Affordable Care Act that we would waive in order to implement this program. We're proposing to waive Section 36(B) to allow the state to determine consumers aged 19-64 with incomes 0 to 250% of the Federal Poverty Line eligible for the Essential Plan instead of Qualified Health Plans with Advanced Premium Tax Credit on the marketplace—on the New York State of Health Marketplace.

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As I mentioned earlier, the waiver is required to be deficit neutral for the Federal government. The actuarial analysis attached with the Waiver Application projects the waiver to be deficit neutral as required while increasing affordability of coverage and expanding coverage to additional New Yorkers. The state is requesting to use Federal savings from foregone premium tax credit and Federal spending on the current Basic Health Program that funds the Essential Plan today, to cover the waiver population. In other words, we're asking the Federal funding that would have been spent without the

waiver to cover the cost of the entire Essential Plan population, including the expanded population.

The State projects that Federal funding will continue to fully fund the Essential Plan with the expanded eligibility for all five years of the waiver period. The state would use any excess passthrough funding for program improvements, including social determinants of health interventions, further reductions in cost sharing, as well as expanded access to services. The state is also requesting continued access to the current Essential Plan Trust Fund balance.

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This slide shows the timeline for the final waiver submission and implementation. So, we started the public comment period on February 9th. We had our first public hearing last Wednesday on February 22nd, and the second hearing on Thursday the 23rd. Today is the Tribal Consultation, as you know. The comment period ends on March 11th. And after reviewing and incorporating comments, we are targeting a submission of the Waiver Application to HHS and Treasury around April 7th. The goal is that we would like the waiver to be approved by the end of August, so we'll have all of our systems in place for a January 1, 2024 implementation.

And with that, I will pass it to Danielle for the public comment.

Danielle Holahan: Great, thank you Sonia. So, we're going to open it now for your questions and comments. And we just ask that you either put into the Q&A or raise your hand using that raised hand icon. And let us know if you would like to offer a comment or ask questions. I know we're a small group today, so we will go ahead and unmute your line if you indicate that you want to ask a question or make a comment.

No comments yet.

Thank you.

We will stay on for another several minutes in case there are questions or comments that arise. Otherwise, we'll thank you for your participation, and we can put up the final slide that shows you the link again if you prefer to share comments in writing. I will give this another minute.

I just wanted to share again the link to our website where all the 1332 Waiver materials are posted. There's a Draft Application and Draft Actuarial Analysis, and then there are options for how to submit written comments included. There's a comment form that can be completed. We are also accepting comments in writing to the mailing address listed here and by email to the email address listed on the screen. And again, we ask for comments to be submitted by March 11th so that we have time to review and incorporate them before we update the application and submit it in its final form to CMS.

So, thank you for participating today and we hope to hear from you. It doesn't sound like we have comments or questions today. We appreciate you joining us in hearing our overview and look forward to receiving any questions or comments that you may have.

So, I think with that we'll close for the day, thank you all again for participating.