New York: State Innovation Waiver under Section 1332 of the ACA - Amendment

September 25, 2024

The U.S. Department of Health and Human Services and the U.S. Department of the Treasury (collectively, "the Departments") approved New York's (also referred to as the "State") application for an amendment of its State Innovation Waiver under section 1332 of the Affordable Care Act (ACA) (referred to as a "section 1332 waiver") effective from January 1, 2025, through December 31, 2028. The amended section 1332 waiver will allow New York to implement state cost-sharing subsidies for certain enrollees in New York State of Health, the state health insurance Exchange (the Exchange). Additionally, the amended section 1332 waiver plan continues New York's coverage program, the Essential Plan (EP) Expansion, which generally mirrors the State's Basic Health Program (BHP), with expanded eligibility for certain residents with estimated household incomes up to 250% of the Federal Poverty Level (FPL). The EP Expansion also includes some 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.

Actuarial analyses performed on behalf of New York and submitted as part of its section 1332 waiver amendment application project that the amended waiver will result in more individuals having coverage with improved affordability. These actuarial analyses project that certain residents with estimated household incomes above 200% of FPL are projected to experience an aggregate premium and cost-sharing savings of $3.6 billion over the full 5-year waiver period. Of this, state cost-sharing subsidies introduced under the waiver amendment for certain Exchange enrollees starting in 2025 are projected to result in aggregate savings of $307 million in 2025 and $1.3 billion from 2025-2028 for an estimated annual average of 117,687 enrollees.

As a result of New York's amended section 1332 waiver, the State will continue to receive federal pass-through funding. Specifically, New York will receive pass-through funding based on the premium tax credit (PTC) savings associated with the elimination of spending on PTC in the individual market for certain individuals with estimated household incomes of 200 to 250% of FPL and based on the elimination of federal spending on BHP payments to the extent the associated savings correspond to PTC for individuals who would have otherwise enrolled in qualified health plans (QHPs) offered on the Exchange.[1] This pass-through funding will be used to fund the amended waiver's EP Expansion, an Insurer Reimbursement Implementation Plan (IRIP) established under the State's section 1332 waiver to prevent premium increases for individual market enrollees due to the impact of individuals with estimated household incomes of 200 to 250% of FPL moving to the EP Expansion under the waiver,[2] and state cost-sharing subsidies for certain Exchange enrollees.

The Departments have determined that New York's amended section 1332 waiver plan meets the requirements outlined in sections 1332(b)(1)(A)-(D) of the ACA. Specifically, the amended

[1] To the extent the waiver imposes additional net costs on the federal government, this pass-through funding would be reduced to ensure deficit neutrality.
[2] Insurers will be provided a reimbursement for any lost revenue due to the section 1332 waiver in lieu of passing along increased costs to consumers in the form of higher premiums.

section 1332 waiver is projected:

- to provide coverage at least as comprehensive as coverage provided without the waiver;
- 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;
- to provide coverage to at least a comparable number of people as would be provided without the waiver; and
- to not increase the federal deficit.

New York's amended State Innovation Waiver under section 1332 of the ACA is approved subject to New York accepting specific terms and conditions (STCs). This waiver amendment approval is effective for a waiver period of January 1, 2025, through December 31, 2028.[3]

Summary of New York's Application for a State Innovation Waiver Amendment under Section 1332 of the ACA

New York's waiver amendment expands the affordability programs under its waiver plan to provide new state subsidies for certain Exchange enrollees. The amended waiver will include three new state subsidies beginning in 2025: (1) state cost-sharing subsidies for on-Exchange silver plan enrollees with estimated household incomes up to 400% of FPL; (2) state cost-sharing subsidies for certain diabetes-related services for all Exchange enrollees; and (3) state cost-sharing subsidies for certain pregnancy and postpartum outpatient care, inclusive of mental health services, for all Exchange enrollees. New York did not request to waive any additional provisions of law for purposes of the waiver amendment.[4]

As a result of the Departments' approval of New York's amended section 1332 waiver, consumers are projected to benefit in a number of ways, including: increased access to coverage; improved affordability of coverage; and access to additional health benefits under the EP Expansion, like adult dental and vision coverage. The Departments have determined that New York's amended waiver is 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 amended section 1332 waiver, the State projects that average premium rates for individual coverage will be the same or lower than they would have been absent the waiver.

In addition to the affordability improvements projected to result from New York's initially approved waiver, New York has projected that the state cost-sharing subsidies for certain Exchange enrollees introduced under the waiver amendment will result in aggregate savings of $307 million in 2025 and $1.3 billion from 2025-2028 for an estimated annual average of 117,687 enrollees. New York has projected that an average of 79,117 enrollees with estimated household incomes of up to 350% of FPL will save an average of $3,456 per year and that an average of 20,224 enrollees with estimated household incomes of 350% to 400% of FPL will save an average of $734 per year. Further, New York has projected that an average of 16,737 enrollees who access diabetes-related services will experience average annual savings of $1,648 and that 1,610 enrollees on average will experience average annual savings of $2,819 for

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[3] This waiver amendment amends New York's section 1332 waiver approved on March 1, 2024.
[4] The waived provisions associated with the state's original 1332 waiver plan are described here: https://www.cms.gov/files/document/new-york-section-1332-waiver-fact-sheet.pdf

outpatient services related to pregnancy and postpartum care, including mental health services. The State projects that approximately 5,000 enrollees will be eligible for more than one new state cost-sharing subsidy under the waiver amendment and has accounted for this in the projections.

Under the amended waiver, individuals with estimated household incomes of 200 to 250% of FPL (who were ineligible for the EP prior to the waiver's implementation) will have no premiums or deductible and limited cost-sharing.[5] The EP Expansion also includes certain individuals with estimated household incomes of up to 250% of FPL who would otherwise be enrolled in Medicaid coverage or in a state-funded health insurance program absent the waiver; these enrollees experience cost-sharing and coverage under the EP Expansion equivalent to those under Medicaid.

New York projects that under the amended waiver, combined enrollment for the individual market and EP expansion will be 3.9% higher in plan year (PY) 2025 and 4.1% higher in PYs 2026-2028 than they would be without the waiver. New York has estimated that the overall number of individuals with coverage will similarly be higher under the waiver than in the without-waiver baseline in each year of the waiver period. These projections were certified by independent actuaries and reviewed by the Departments.

Because there would be no PTC spending on individuals under age 65 with estimated household incomes of up to 250% of FPL (including individuals with estimated household incomes up to 200% of FPL), the Departments anticipate a net decrease in federal spending on PTC under the amended waiver than absent the amended waiver.[6] As such, New York will receive pass-through funding associated with the elimination of spending on PTC for individuals with estimated household incomes up to 250% of FPL to support its state waiver plan. This pass-through funding is based on the amount of PTC that would have been provided on behalf of New York residents in the without-waiver baseline but that will not be provided under the amended waiver. The total amount passed through to the State will be reduced, if necessary, to ensure deficit neutrality. The State estimates that the amended waiver will produce net federal savings of $12.9 billion in 2025 and $55.1 billion over the amended waiver period from January 1, 2025, through December 31, 2028 (which reflects the expiration of the enhanced PTC schedule under the Inflation Reduction Act after 2025). Some of these savings will be provided to the State as pass-through funding that will cover a portion of state costs for the EP Expansion, IRIP, state subsidies for certain Exchange enrollees, and programs established under the waiver to improve the comprehensiveness and affordability of the EP Expansion through, for example, initiatives addressing social determinants of health and behavioral health services.

[5] The EP Expansion has a tiered cost-sharing structure. Maximum out-of-pocket costs are: $200 for prescriptions only for enrollees with estimated household incomes of 100 to 150% of FPL; $360 for enrollees with estimated household incomes of 150 to 200% of FPL; and $2,000 for enrollees with estimated household incomes of over 200% of FPL.

[6] Although the introduction of state cost-sharing subsidies for certain Exchange enrollees under the waiver amendment is expected to increase PTC-subsidized Exchange enrollment and thus federal PTC spending on those for whom PTC has not been waived, this additional PTC spending is projected to be more than offset by the PTC savings yielded by the elimination of PTC spending on certain individuals with estimated household incomes up to 250% of FPL.

Section 1332: State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver to pursue innovative strategies for providing residents with access to high-quality, affordable health insurance. These waivers provide states with the opportunity to develop strategies that best suit their individual needs. Through innovative thinking tailored to specific state circumstances, states can lower premiums for consumers, improve market stability, and increase consumer choice.

In order for a section 1332 waiver to be approved, the Departments must determine that the waiver meets statutory guardrails to provide coverage that is at least as comprehensive as the coverage provided without the waiver; provide coverage and cost-sharing protections against excessive out-of-pocket spending that are at least as affordable as without the waiver; provide coverage to at least a comparable number of residents as without the waiver; and not increase the federal deficit.

State Innovation Waivers under section 1332 of the ACA have been available since January 1, 2017; are approved for up to five-year periods; and can be extended. The Departments welcome the opportunity to work with states on section 1332 waivers. States interested in applying for a section 1332 waiver can find application tools and resources, including an application checklist and application templates, on the CMS website here.

The section 1332 waiver amendment approval letter and STCs for New York can be found here.