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

January 15, 2025

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 extension of its State Innovation Waiver under section 1332 of the Affordable Care Act (ACA) (referred to as a "section 1332 waiver") effective from the date the State accepts the Specific Terms and Conditions (STCs), through December 31, 2029.[1] The extension of the section 1332 waiver will allow the State to continue New York's coverage program, the Essential Plan (EP) Expansion, through plan year 2029. The EP Expansion 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. In addition, New York's waiver plan includes among its affordability programs state subsidies for certain enrollees in New York State of Health, the state health insurance exchange ("the Exchange").

Actuarial analyses performed on behalf of New York and submitted as part of its section 1332 waiver extension application project that under the waiver and relative to the without-waiver baseline, more individuals will have coverage, and affordability will be improved for certain residents with estimated household incomes over 200% of FPL, who are enrolled in the EP Expansion and the Exchange.

As a result of New York's extended 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.[2] This pass-through funding will be used to fund the 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,[3] and state cost-sharing subsidies for certain Exchange enrollees.

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

[1] New York's 1332 waiver includes the initial waiver, approved on March 1, 2024, and the waiver amendment approved on September 25, 2024.
[2] To the extent the waiver imposes additional net costs on the federal government, this pass-through funding would be reduced to ensure deficit neutrality.
[3] 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.

extension 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.

The extension of New York's State Innovation Waiver under section 1332 of the ACA is approved subject to New York accepting specific terms and conditions (STCs). This waiver extension approval is effective from the date the State signs the STCs, through December 31, 2029.[4]

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

New York's State Innovation Waiver under section 1332 of the ACA waives section 36B of the Internal Revenue Code to the extent it would otherwise provide that a month is a "coverage month" (and therefore a PTC may be allowed for that month) if an individual residing in New York is under age 65 and has in effect a determination by the Exchange that their estimated household income is at or below 250% of FPL, as well as section 1402 of the ACA to the extent it would otherwise make New York residents under age 65 and with estimated household incomes at or below 250% of FPL eligible for cost-sharing reductions, for the purposes of enrolling these individuals in the State's new coverage program, the EP Expansion. The State's application also sought to waive the single risk pool requirement in the individual market under section 1312(c)(1) of the ACA to the extent it would otherwise prohibit including individuals with estimated household incomes 200 to 250% of FPL in the individual market single risk pool when establishing the market-wide index rate for the purposes described in the State's section 1332 waiver application.[5]

As a result of the Departments' approval of New York's section 1332 waiver extension, 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 extended waiver is projected to continue 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 extended section 1332 waiver, the State projects that average premium rates for individual coverage will continue to be the same or lower than they would have been absent the waiver. The extended waiver is also projected to continue to reduce cost-sharing for certain Exchange enrollees through state cost-sharing subsidies for on-Exchange silver plan enrollees with estimated household incomes up to 400% of FPL; for certain diabetes-

[4] This waiver extension extends New York's section 1332 amended waiver. The initial waiver was approved on March 1, 2024, and the waiver amendment was approved on September 25, 2024.
[5] 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

related services for all Exchange enrollees; and for certain pregnancy and postpartum outpatient care, inclusive of mental health services, for all Exchange enrollees.

Under the extended 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 continue to have no premiums or deductible and limited cost-sharing.[6] 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 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 2026-2029 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 waiver than absent the waiver.[7] 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 waiver. The total amount passed through to the State will be reduced, if necessary, to ensure deficit neutrality. The State estimates that the waiver will produce net federal savings of $12.9 billion in 2025 and $71.1 billion over the extended waiver period beginning on the date of the State's acceptance of the STCs, through December 31, 2029 (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.

Section 1332: State Innovation Waivers

Section 1332 of the ACA permits a state to apply for a State Innovation Waiver to pursue

[6] 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.

[7] 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.

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 extension approval letter and STCs for New York can be found here.