GREATER NEW YORK HOSPITAL ASSOCIATION
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August
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The Honorable Janet Yellen
Secretary of the Treasury

The Honorable Xavier Becerra
Secretary of Health and Human Services

Re: Addendum to NY 1332 Waiver: Insurer Reimbursement Implementation Plan (IRIP)

Dear Secretary Yellen and Secretary Becerra:

Thank you for the opportunity to comment on NY State of Health's Addendum to NY 1332 Waiver: Insurer Reimbursement Implementation Plan (IRIP), which was submitted to the Centers for Medicare & Medicaid Services (CMS) on August 23, 2023 (Addendum). As expressed in our July 5, 2023, comments to the 1332 Innovation Waiver application (Waiver), Greater New York Hospital Association (GNYHA) has strongly supported New York's Essential Plan (EP) since its inception, and we encourage current efforts to further expand eligibility so even more New Yorkers can access affordable and comprehensive coverage.

As we understand the Waiver, the New York State Department of Health (DOH) is seeking Federal authority to expand EP coverage under Section 1332 to residents with incomes up to 250% of the Federal Poverty Level (FPL). The vast majority of the expected approximately 90,000 newly eligible EP enrollees will be able to seamlessly transition to EP plans offered by their existing Qualified Health Plan (QHP) insurers, and the EP plans available to this expansion population will offer lower cost-sharing and premiums relative to the currently available QHP marketplace plans. The existing EP population will not experience any changes to benefits, choice of plans, premiums, cost-sharing, eligibility, or enrollment processes as a result of the Waiver.[1, 2]

The Addendum addresses an important potential implication of the Waiver—an increase in individual market premiums due to moving the 200-250% FPL group from the QHP marketplace to EP eligibility. As the Waiver is a vehicle for achieving the goal of ensuring access to affordable, comprehensive coverage for New Yorkers, we appreciate DOH's thorough consideration of unintended consequences and strongly support efforts to ensure that New Yorkers in the QHP individual market do not face increased premiums because of the Waiver.

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[1] New York Section 1332 Innovation Waiver Essential Plan Expansion, May 12, 2023, page 4. NY 1332 Waiver Application_5.12.2023.pdf.
[2] Appendix B: Public Comment Materials, Full Public Notice, Department of Health, New York Essential Plan Expansion (Section 1332 State Innovation Waiver).

DOH proposes to use pass-through funding to reimburse insurers directly for the Waiver's impact on the individual market (an estimated $44–$59 million for the 2024 Plan Year), rather than approve increased individual market premium rates that would pass the costs on to consumers. DOH also requests a waiver of Section 1312(c) of the Affordable Care Act, as implemented at 45 CFR 156.80, to enable health insurers to set rates as if the individual market risk pool continued to include residents with incomes between 200-250% FPL. Finally, the Addendum proposes a process for DOH to make initial partial and final reconciliation payments to insurers, which includes the Department of Financial Services collecting and analyzing data supporting the estimated losses.[3]

We strongly support shielding consumers from increased premium costs, especially during this period of the continuous coverage unwind and Medicaid recertifications. In expanding EP eligibility to residents with incomes up to 250% FPL and providing them with access to lower cost-sharing and premiums, New York should not inadvertently create financial burdens in the form of increased premiums for New Yorkers above 250% FPL who will remain in the individual QHP market. Many individuals are exploring marketplace options for the first time since the pandemic began, and it is imperative not to exacerbate sticker shock that could potentially discourage enrollment.

Beyond emphasizing this important overarching principle that consumers should be shielded from Waiver-related increased premium costs, we are not commenting on the Addendum's fiscal analysis and proposed methodology for reimbursing insurers using surplus pass-through funding. We defer to DOH given the need to expeditiously move forward with the Waiver due to the continuous coverage unwind and impending 2024 open enrollment.

However, we caution that the premium rate-setting process for New York insurers is established and includes opportunity for stakeholder comment. It will be important to ensure that any alternative mechanism for determining risk pool premium impacts follows existing rate-setting protocols and incorporates public comment and regulator approval/disapproval authority. Rather than adopting the Addendum's pass-through funding reimbursement methodology for the duration of the Waiver, DOH could evaluate whether it is needed on an annual basis, using actual "with Waiver" individual market experience.

We look forward to continuing to work with DOH and CMS on EP expansion and operations. Please contact me if you have any questions.

Sincerely,

Emily Leish

Emily Leish
Senior Vice President, Health Finance and Managed Care

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[3] Addendum to New York 1332 Waiver: Insurer Reimbursement Implementation Plan (IRIP), August 23, 2023
1332-ny-waiver-addendum-irip-82323.pdf (cms.gov)

African Service Committee ଔ Children's Defense Fund-New York
Coalition for Asian American Children and Families ଔ Community Service Society of New York
Consumers Union ଔ Empire Justice Center ଔ Entertainment Community Fund ଔ Hispanic Federation
Hospital Equity Accountability Project ଔ The Legal Aid Society ଔ Make the Road New York
Medicare Rights Center ଔ Metro New York Health Care for All Campaign
New Yorkers for Accessible Health Coverage ଔ New York Immigration Coalition
Project CHARGE ଔ Public Policy and Education Fund of New York/Citizen Action of New York
Raising Women's Voices-New York ଔ Schuyler Center for Analysis and Advocacy
South Asian Council for Social Services ଔ Young Invincibles

August 30, 2023

Submitted by:
Health Care For All New York

Health Care For All New York (HCFANY) would like to thank the Centers for Medicare and Medicaid Services (CMS) for the opportunity to comment on the Section 1332 Innovation Waiver Addendum, recently posted on its website. HCFANY is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers.

HCFANY writes to express its objection to New York's "Addendum to New York 1332 Waiver: Insurer Reimbursement Implementation Plan (IRIP)" for two reasons: (1) it would disproportionately benefit higher income New Yorkers and carriers, contrary to the purpose of Section 1332 and the overall Affordable Care Act (ACA); (2) no detailed allocation methodology ensures a cap on the IRIP payments to plans; and (3) too little engagement and notice was provided to the public.

1. **The IRIP Would Disproportionately Benefit Higher Income New Yorkers and Carriers.**

According to CMS, the purpose of 1332 waivers is to fund "innovative strategies for providing residents with access to high quality, affordable health insurance while retaining the basic protections of the ACA."[1] Integral to the design of the ACA is the sliding fee scale structure of the Advance Premium Tax Credit (APTCs) system, which provides financial assistance to people on a sliding scale basis, with a phase-out to people at 400 percent of the federal poverty level (FPL). In recognition that additional assistance was required, Congress enhanced the premium assistance for lower-income people and extended it to those at up to 600 percent of FPL under the American Rescue Plan of 2021.

[1] https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-

The IRIP proposal is regressive, not progressive, in that it would provide up to $59 million in additional funding to the carriers to bring down premiums in the individual market writ large. **Regressively, the residents of New York State who would benefit the most from this proposal are people with incomes over 600 percent of the FPL, who are ineligible for APTCs (people earning over $180,000 a year for a family of four).**[2]

The IRIP addendum does nothing to target moderate-income individuals—between 251-600 percent of FPL. They will have to pay anywhere from 4 percent to 8.5 percent of their family income on coverage that has a huge barrier to entry to care (a $2,100 deductible for a Silver plan).[3] This Addendum must be considered in the context that the original Section 1332 Waiver proposal has already earmarked $5.8 billion in provider and carrier funding increases.

Better options exist. Instead of approving the IRIP addendum, CMS and New York State policymakers should work together to cover more New Yorkers at an affordable price – consistent with the goals of the 1332 Wavier program. Policy vehicles for doing so include the following:

- Using surplus funding to cover some or all New York immigrants who are otherwise ineligible for coverage—an inflow of this healthy population would be bring better risk and drive down premiums, generating savings for the federal government;
- Eliminating the proposed $15 monthly premium for Essential Plan enrollees with incomes between 200-250% of FPL (which would generate just $16 million a year)—less churn in the program will reduce adverse selection and likewise would drive down premiums, generating savings for the federal government;
- Implementing an enrollee assistance program that brings the deductibles for a Silver plan down to $600 from the proposed $2,100 for the 2024 plan year;
- Adopting a state premium assistance program, such as the one California has implemented.

2. If adopted, the IRIP should include upward payment guardrails.

New York State policymakers have estimated that premiums will increase by 2.2 (NYSOH Section 1332 Waiver proposal) – 3.2 percent (NYS Department of Financial Services communication to carriers) in 2024 because 70,000 New Yorkers with incomes between 200-250 percent of FPL may theoretically migrate from Qualified Health Plans to the Essential Plan. But this premium increase is not certain. During this same period, the federal Public Health Emergency is coming to an end, and tens of thousands of individuals are likely to migrate *back* to the individual market.[4]

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[2] https://aspe.hhs.gov/sites/default/files/documents/1c92a9207f3ed5915ca020d58fe77696/detailed-guidelines-2023.pdf.

[3]https://info.nystateofhealth.ny.gov/sites/default/files/Attachment%20B%20Standard%20Schedule%20of%20Benefits%202024%207.20.2023.pdf

[4] https://hcfany.org/read-hcfanys-2024-rate-review-comments/

The IRIP Addendum would offset individual market premium increases by establishing a $44 million to $59 million reimbursement program for the carriers to defray premium increases. This program apparently would operate for years, even though the actual impact to the individual market remains uncertain (as described in the prior paragraph).

Not only is the IRIP based on speculative assumptions, it also does not provide a methodology or description about how this reimbursement program will work, if adopted. Most importantly, the IRIP Addendum does not state that there will be an upward cap on the carrier reimbursement amount.

Operating like a reinsurance program, the IRIP would support a climate in which carriers have less incentive to use their bargaining power to control costs—essentially creating health "plan moral hazard."[5] Carriers should not receive such windfalls. CMS should require the public disclosure of a detailed methodology with guardrails on carriers' moral hazard to overstate premium increases that are related to the 1332 enrollment.

3. **Inadequate notice has been provided to the public about the IRIP.**

According to the Addendum posted on CMS's website by the New York State of Health, the carriers received three briefings: on August 11, 17, and 18, 2023. The document does not indicate that any other public or stakeholder briefings were provided. And no update has been added to the State's public 1332 Waiver homepage. A few stakeholders received an email on August 23, 2023, from a state official indicating that the public would have one week to provide comments on the Addendum.

This inadequate process is rushed and fails to afford a meaningful public discussion of the proposal.

Thank you for considering our comments. Should you have any questions, please contact Mia Wagner at: mwagner@cssny.org.

[5] Jeah Jung & Roger Feldman, "Growing Reinsurance Payments Weaken Competitive Bidding in Medicare Part D," *Health Services Research*, 10.1111/1475-6773.12866 (2018).

Siegel, Karen (CMS/CCIIO)

From: Cheryl Hogan <chogan@hinmanstraub.com>
Sent: Wednesday, August 30, 2023 5:34 PM
To: CMS StateInnovationWaivers
Cc: Sean Doolan
Subject: Comments on NYS 1332 Waiver

Thank you for the opportunity to comment on New York's supplement to its section 1332 waiver application. Our firm represents the New York State Conference of Blue Cross and Blue Shield Plans, which includes Empire Blue Cross Blue Shield, Excellus Blue Cross and Blue Shield, and Highmark.

We fully support the state's effort to increase the income eligibility for the Essential Plan as this coverage has been a successful means to offering low or no cost coverage for low income New Yorkers, further reducing the ranks of the uninsured level in New York to unprecedented lows. The only potential negative impact in expanding Essential Plan eligibility is the potential negative impact on New York's already struggling individual market. We appreciate both the State and CMS's sensitivity to this unintended consequence.

Issuers in New York submitted two sets of 2024 individual market premium rates to the Department of Financial Services ("DFS") due to the pending section 1332 waiver. The first set of rates was based on the assumption that the section 1332 waiver application would not be approved (the "lower rates"). The second set of rates was based on the assumption that the waiver application would be approved (the "higher rates"). DFS then approved both a lower rate and a higher rate for each issuer.

To mitigate the impact of its 1332 waiver on 2024 individual market premiums as the 200 – 250% of the Federal Poverty Level (FPL) population transitions out of the market into the Essential Plan, New York proposes that issuers would charge individual policyholders the lower rates even if the waiver application is approved. The state would then on a quarterly basis, using actual enrollment data, pay issuers the difference between their approved lower rates and the approved higher rates. Payments would be made from the federal surplus passthrough funding.

Pursuant to the state's proposal, individual market policyholders' 2024 premiums would not increase as a result of approval of the waiver application and issuers would not be negatively impacted by charging policyholders the lower rates because they would be made whole with the use of federal funding. We support this proposal because it insulates consumers in the individual market from the impact of the expansion of EP while at the same time not negatively impacting health plan finances. Individual consumers should not be adversely impacted due to increased assistance being given to another segment of the population. Further, the proposal achieves this without impacting issuers. It uses federal pass through dollars to ensure that issuers receive the full premium determined appropriate by DFS. Quarterly payments to issuers will make up the difference between the lower rates and the higher rates ,thereby ensuring issuers are made whole.

Regards,

Cheryl

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Please know that our firm will never ask that you transfer money by wire or check without verbal confirmation. If you receive an e-mail from any third party or from our office requesting money be transferred, please report it to me immediately. Our office will only transfer money with verbal confirmation.

New York
HPA
Health Plan Association

41 State Street   Suite 900
Albany, NY   12207

August 30, 2023

Re: New York State 1332 Waiver: Insurer Reimbursement Implementation Plan (IRIP)

Sent via email: stateinnovationwaivers@cms.hhs.gov

On behalf of the New York Health Plan Association (HPA), which represents 27 health plans that serve more than eight million New Yorkers, including 11 of the 12 plans participating in the individual market, we are writing to submit the following comments in regard to the individual market premium mitigation proposal to be implemented along with New York's 1332 waiver. HPA supports the State's proposed process to mitigate the impact on premiums as a result of the population with incomes between 200% -250% of the Federal Poverty Level (FPL) being transitioned out of the individual market and into the Essential Plan (EP), as outlined in a discussion with New York State of Health (NYSoH) and Department of Financial Services (DFS) staff and in an email to HPA from DFS, dated August 28, 2023.

HPA appreciates the State's partnership in addressing the industry's concerns related to the impact of the 1332 waiver on individual market premiums, and supports efforts to make coverage more affordable for consumers and avoid an enrollment decline in the individual market (aside from the transition of the 200%-250% FPL population).

HPA supports the State's and CMS's efforts to address the impact to the individual market associated with the shift in population to the EP under the 1332 waiver, and agrees that the proposed premium mitigation process is a beneficial use of pass-through funding under the waiver. We appreciate the transparency of the mitigation process and the absence of any final reconciliation. Timely processing of reimbursement to plans will be critical to assure the stability of the market in the coming year.

We continue to strongly support the State's 1332 waiver application to expand eligibility in EP from 200% to 250% of the FPL, and will continue to work closely with State and Federal partners to assure coverage for all New Yorkers.

Sincerely,

President & CEO

Siegel, Karen (CMS/CCIIO)

From: Budros, Michael <MBudros@manatt.com>
Sent: Wednesday, August 30, 2023 3:37 PM
To: CMS StateInnovationWaivers
Cc: Lam, Alice; Singh, Alexandra
Subject: PHP Coalition Comment Letter Regarding NYS State Innovation Waiver Addendum

Good afternoon,

We are writing to submit comments on behalf of the Coalition of New York State Public Health Plans ("PHP Coalition" or "the Coalition") regarding New York State's proposed Section 1332 State Innovation Waiver Addendum shared with the Coalition on August 23, 2023.

The PHP Coalition represents eight health plans that serve more than 5.6 million New Yorkers enrolled in the State's government-sponsored healthcare programs: "Mainstream" Medicaid Managed Care (MMC), HIV Special Needs Plans (HIV SNPs), Health and Recovery Plans (HARPs), Child Health Plus (CHP), Essential Plan (EP), and subsidized Qualified Health Plan (QHP) coverage offered through the New York State of Health Marketplace. Three out of four New Yorkers enrolled in an EP or QHP are covered by a PHP Coalition plan. The Coalition's comments therefore stem from the our collective, extensive expertise managing care for people enrolled in EP and QHPs, and reflect our commitment to preserve, strengthen, and expand New York's public healthcare coverage programs.

The Coalition previously submitted public comments on the State's 1332 State Innovation Waiver application strongly supporting the State's plans to expand EP beyond 200% of the federal poverty level (FPL) up to 250% FPL for those who are eligible. Plans are already preparing operationally for the expansion to occur January 1, 2024. A major area of concern for Coalition plans, however, was the impact this expansion would have on the individual market. Namely, we expressed concern in our original comments that the State's relatively small individual market would be negatively affected by the projected increase in consumer premiums that would result from lower-income members shifting out of QHPs and into EP.

We greatly appreciate the State's response to these concerns in the form of the Insurer Reimbursement Implementation Plan (IRIP). **The Coalition and other health plan associations have been engaged in discussions with the State and agreed to further adjustments to the IRIP methodology. Based on these discussions and further adjustments, the Coalition is supportive of the IRIP approach for a January 1, 2024 implementation**. As discussed with the State, the Coalition believes it is important for New York to continue to explore rigorous, long-term solutions – such as reinsurance or risk adjustment – to ensure a strong and stable individual market.

The PHP Coalition believes that the EP program is a fundamental, high quality, and popular component of New York's public healthcare coverage continuum, and we welcome the State's interest to expand it. The EP already provides low- to zero-cost coverage for comprehensive benefits (including dental and vision) to low-income New Yorkers through a robust and high quality network of providers. In addition, the flexibility and funding offered by the EP program has allowed health plans to make significant investments in advancing quality improvement and health equity and expanded health care access for people who traditionally face the most barriers to care. We look forward to continuing our partnership with the State and tackling a long-term solution for individual market stability in the months to come.

Thank you,

Michael Budros
(He/Him/His)
Manager - Manatt Health Strategies

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Comments of United Hospital Fund
to CMS State Innovation Waiver Team
on Addendum to New York 1332 Waiver
Insurer Reimbursement Implementation Plan (IRIP)

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August 29, 2023

In March 2023, United Hospital Fund (UHF) submitted comments to New York State in support of its' Section 1332 Waiver to increase eligibility for the Essential Plan (Basic Health Program) to 250% of the federal poverty level (FPL), from it's current 200% limit. Today, we are **writing in support of the Addendum to the New York 1332 Waiver: Insurer Reimbursement Plan (IRIP), which makes a significant improvement to an already solid application**.

UHF is a 144-year-old, independent non-profit that works to build an effective and equitable health care system for every New Yorker. As part of that mission, we have worked for decades to ensure all New Yorkers have access to comprehensive, affordable health insurance through coverage programs for the underserved. The individual market in New York, once so dysfunctional it was often cited in court papers challenging the constitutionality of the Affordable Care Act (ACA), has been a special focus of UHF's work. We've illustrated how ACA advanced premium tax credits[i] and more recently the American Rescue Plan Act and Inflation Reduction Act enhancements[ii] have stabilized and reinvigorated our individual Qualified Health Plan (QHP) market. In addition, New York is one of only two states who have taken advantage of ACA Section 1331 authority to bring even more affordable coverage to those ineligible for Medicaid or with incomes just over the Medicaid eligibility limit. The extraordinarily successful Essential Plan (EP) program now covers over 1 million New Yorkers with $0 premiums and minimal cost sharing.

The EP's lone shortcoming is its impact on the QHP market, since it draws a portion of its enrollment from those who would otherwise be eligible for QHPs, thus adversely affecting the morbidity of that segment, and increasing premiums. For the new 200% to 250% cohort, the Addendum elegantly and creatively addresses this problem through the proposed IRIP. This plan will protect QHP enrollees from additional premium increases stemming from the new EP eligibility limit by earmarking a portion of the pass-through funding for this purpose, at the same time keeping health plans whole, a neat trick.

The IRIP is effectively a targeted reinsurance mechanism designed to avert premium increases for current or future QHP enrollees. It's clear from the Addendum that the Department of Health and the Department of Financial Services, with significant input from health plans, have designed a thoughtful and detailed plan to put this mechanism in place, developing the new requirements based on solid data, and integrating them within our existing rate-setting rules and marketplace schedule.

The application and addendum are particularly timely. UHF recently conducted the second of aseries of convenings on the unwinding, and it is clear that some consumers losing eligibility for Medicaid or the EP still find QHP coverage a bridge too far in terms of affordability. The waiver and the addendum will create a new option for the 200-250% FPL cohort, and eliminate additional premium increases that might result for QHP enrollees.

For all these reasons, **we support the IRIP wholeheartedly and urge its speedy approval**. With this waiver in place, New York policymakers can turn their attention to other pressing needs, such as coverage for immigrants, and additional QHP affordability enhancement.

Thank you for your kind attention to this matter. Please feel free to contact Peter Newell at pnewell@uhfnyc.org with any questions you may have.

Sincerely,

Oxiris Barbot, MD

Oxiris Barbot, MD
President and CEO

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[i] May 2016. Affordable Care Act Bring New Life – and Covered Lives – to New York's Individual Market. United Hospital Fund. https://media.uhfnyc.org/filer_public/a1/85/a1857cd4-42dd-452f-89cb-72248efc345e/indmarket-layout-201605251.pdf

[ii]July 2021. A Shot in the Arm: Smerican Rescue Plan Act Boosts Health Coverage Affordability. United Hospital Fund. https://uhfnyc.org/publications/publication/ARPA-boosts-health-coverage-affordability/

Individual Comment Received on New York's 1332 Waiver Addendum

8/29/23
Dear Federal Bureaucrat & National Citizen:
New York already currently has 3-6 month wait times for an initial valuation by a specialist including but not limited to childrens optomologists.

All the state is doing is attempting to protect themself from fraud lawsuits and breach of contract suits by the extension time demanded.

This is misprision of felonies by US HHS if any waiver on so-called innovation is allowed for New York State and her officials.

Kindly govern yourself accordingly.
AG