

Addendum to New York 1332 Waiver: Insurer Reimbursement Implementation Plan (IRIP)

Overview

The State evaluated several options to mitigate the impact of its 1332 Waiver on individual market premiums as the 200 – 250% of the Federal Poverty Level (FPL) population transitions out of the market into the Essential Plan. The State has decided to use some of the surplus passthrough funding each year the waiver is in effect to provide a reimbursement to insurers in lieu of approving the higher, with waiver individual market premium rates. Under this scenario, DFS will approve insurers' with-waiver, IRIP rates for each plan year (represented by the without waiver rates in the actuarial analysis provided on May 12), which has several benefits:

- 1) **Lowers Premiums for Consumers:** Consumers in the individual market will not experience an increase in premiums due to the waiver. This means there is no difference in affordability for consumers remaining in the individual market with and without the waiver. It also means that there is no longer an expected decline in individual market enrollment beyond the transition of the 200-250% of FPL group into the Essential Plan.
- 2) **Makes Insurers Whole:** Insurers will be provided a reimbursement for the lost revenue under the waiver in lieu of passing along increased costs to consumers in the form of higher premiums.
- 3) **Impact on Pass-through Funding for New York:** Expected federal spend on advance premium tax credits/premium tax credits (APTC/PTC) for consumers is expected to be lower under the waiver after implementing the insurer reimbursement program (since SLCSPP premiums would be lower relative to under the waiver *without* implementing the reimbursement program), As a result, the pass-through funding amount would not need to be offset (since the reimbursement program mitigates premium increases due to the waiver, as described in the May 2023 application) Any available pass-through funding would be used to fund the insurer reimbursement program.

Based on the 1332 waiver actuarial and economic analysis, the State estimates the total insurer reimbursement for PY 2024 will be approximately \$44M. However, this will depend upon actual approved individual market rate increases and actual enrollment, which may differ from the amounts assumed in the actuarial and economic analysis.¹ This does not change the State's analysis with respect to affordability for those under 250% of FPL.

In addition, to achieve its goals of reducing premiums and ensuring stability for the individual markets, New York requests a waiver of section 1312(c) of the ACA as implemented at 45

¹ Note that \$44M represents the estimated carrier reimbursement using the data and assumptions reflected in the original waiver submission for consistency; this includes an estimated 2024 rate increase of 6.2%. The \$59M estimated carrier reimbursement on page 2 reflects a higher estimated 2024 rate increase.

C.F.R. § 156.80, and any other provisions necessary, to the extent that they would otherwise require excluding expected reimbursement to insurers through the IRIP when establishing the market-wide index rate. The Single Risk Pool provision of the ACA (PPACA § 1312) and implementing regulations (45 CFR 156.80) require a health insurance issuer to consider “all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the individual market, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool.” 45 CFR 156.80(d)(2) provides that an “issuer may vary premium rates for a particular plan from its market-wide index rate for a relevant state market based only on the following actuarially justified plan-specific factors.” These regulations enumerate specific factors and limit an issuer’s ability to make plan-level premium adjustments to the market-wide index rate based only on those factors. The permitted factors include actuarial value and cost-sharing design; provider network, delivery system characteristics, and utilization management practices; benefits provided in addition to EHBs; and administrative costs. The enumerated factors apply to all plans in the applicable single risk pool.

The permitted factors above do not include setting the market-wide index rate as if the population with estimated household incomes 200-250% of FPL were included in the individual market. Because New York will reimburse insurers for the impact of moving these individuals out of the individual market, excluding these individuals from the risk pool when setting the market-wide index rate would overstate issuers’ net cost of providing coverage and result in inappropriately high premiums. Therefore, New York is requesting a waiver of PPACA §§ 1312(c)(1) as implemented at 45 CFR 156.80, and any other provisions if necessary to allow issuers in New York to set rates as if the individual market risk pool continued to include the population with expected household incomes 200-250 percent of FPL.

Approach

Implementation

Each year, DFS will collect information from insurers during plan rate filings for both with and without the waiver. Since in New York insurers must receive prior approval of proposed health insurance premiums, insurers must provide justification for every component of the premium increase they request. During this process, DFS reviews and validates the data and justifications in order to issue an approved increase. DFS will then calculate the market-wide average premium increase with and without the waiver.

Given that the State will reimburse insurers for the impact of the waiver, rather than approve the with waiver premium increases, DFS will approve the without waiver premium increases. DFS will be able to confirm that without waiver premiums were appropriately determined under the assumption that the risk pool still includes the 200 – 250% of FPL population by using data that DFS has already collected as well as data that DFS will collect in the future. Please see the



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Appendix for additional details on the guidance that was issued by DFS to insurers for estimating the impact of the 1332 waiver in their 2024 rate filings.

Based on preliminary discussions with health plan associations, the State anticipates that it will make an initial partial payment to insurers based on the insurers' estimated impacts of the waiver as reported in rate filings. After collecting additional data from insurers and after a runout period, the State anticipates that it will calculate and issue a final reconciliation payment to insurers. To calculate the insurer reimbursement, the State will require insurers to provide data to determine their losses that have resulted from having not included the migration of the 200-250% FPL population out of the individual market in their pricing.

This approach has been reviewed and discussed with the health plan associations on August 11, 17, and 18, 2023. The State does not believe there will be issues with liquidity given the initial reimbursement estimates, especially given the relatively small impact the waiver is expected to have on individual market premium rates. Retrospective payments are also common in other programs targeted at premium reductions in the individual market, such as reinsurance, risk adjustment, risk corridors programs. DFS will continue to monitor insurers liquidity and recommend modifying the payment schedule if necessary.

Data Collection & Reimbursement Calculation Methodology

In the beginning of the second quarter of the year following the year in question, DFS would collect data sufficient to calculate and reconcile each insurer's respective reimbursement using the reimbursement parameters below. Please see the Appendix for an example of the data that DFS collected from insurers to determine the impact of the 1332 waiver on 2024 premium rates.

Reimbursement Parameters

Carriers on the individual market can qualify for carrier subsidies based on DFS' evaluation of the information they submit with respect to the amount of earned premium each insurer collects for the applicable plans of insurance sold during the year in question. The State expects that the carrier subsidy will cost up to \$59 million in 2024, and approximately that amount thereafter. However, if actual costs exceed the estimate, the state anticipates being able to use sufficient surplus in annual pass-through funding that could absorb increased costs. If the surplus in annual pass-through funding is insufficient to fully fund the carrier subsidy cost (up to \$59M), the state would identify other state funds to cover the balance through annual budget-making. For example, the Quality Incentive Pool funds are subject to available funds, and the State could consider adjusting the size of this pool as needed based on the amount of the final insurer reimbursement amount.

To calculate the insurer reimbursement, the State will require insurers to provide data including the actual earned premiums for the year in question, with respect to the individual market population. The state will then determine what the aggregate premium base for that year would



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have been in the individual market had insurers actually included a provision for the waiver in their premium rates for the year in question. Each company would receive a pro-rata share of the aggregate difference between the with and without waiver aggregate premiums.

Payment

The State of New York, as approved by the Department of Health, the Office of the State Comptroller, and any third-party fiscal agent of the DOH, will issue payments to insurers.

State Regulations for Issuing Reimbursements

The State believes that our current enabling legislation, [NY Social Services Law section 369-ii\(1\)](#) along with [NY State Finance Law section 98-d\(3\)](#), contains sufficient authority to implement the subsidy program outlined here. The language is included below:

NY Social Services Law section 369-ii(1): *Notwithstanding section three hundred sixty-nine-gg of this title, subject to federal approval, if it is in the financial interest of the state to do so, the commissioner of health is authorized, with the approval of the director of the budget, to establish a 1332 state innovation program pursuant to section 1332 of the patient protection and affordable care act (P.L. 111-148) and subdivision twenty-five of section two hundred sixty-eight-c of the public health law. The commissioner of health's authority pursuant to this section is contingent upon obtaining and maintaining all necessary approvals from the secretary of health and human services and the secretary of the treasury based on an application for a waiver for state innovation. The commissioner of health may take all actions necessary to obtain such approvals.*

NY State Finance Law section 98-d (3): *Such fund shall consist of moneys transferred from the federal government pursuant to 42 U.S.C. 18052 and an approved 1332 state innovation program waiver application for the purpose implementing the state plan under the 1332 state innovation program, established pursuant to section three hundred sixty-nine-ii of the social services law.*

The State Departments of Health and Financial Services expect to issue guidance by the first quarter of 2024 to define the methodology for the carrier subsidy in advance of issuing the payments, allowing for carrier feedback.

The State anticipates that it will continue to refine and improve the implementation of the insurer reimbursement as details are further clarified. This information, including additional specifics of the data collection and calculation methodology, will be communicated to insurers and other stakeholders as necessary through additional bulletins or communications.

Implementation Timeline

The State will build on top of its annual rate filing cadence to collect information from carriers to evaluate the impact the waiver would have had on the individual market and estimate the reimbursement required to make up for lost revenue. Below is an example timeline for PY 2024.

Timeline for PY 2024 Estimates and Insurer Reimbursements

January 2023	DFS begins regular workgroups with issuers to discuss upcoming rate filings.
April 2023	NYSOH releases the Plan Invitation to sell on the exchange.
May – July 2023	DFS collects rate filings and application materials from carriers, including estimates on premium impacts with and without the waiver.
August 2023	DFS identifies the approved with and without waiver premium increases and any differences in carriers’ plans or service areas under the waiver; DFS approves without waiver premium increases.
September 2023	NYSOH uploads premiums and plan information to its website.
September-October 2023	DFS communicates further details regarding final insurer reimbursement calculations with plans.
November 2023	Consumers begin enrolling in plans for 2024; consumers between 200 – 250% of FPL enroll in the Essential Plan.
January 2024	The plan year begins.
First Quarter 2024	DFS calculates initial estimated partial insurer reimbursement for each plan based on the plans’ estimate of premium impact from the waiver.
First Quarter 2024	NYSOH issues initial estimated partial payment to issuers based on DFS estimate.
December 2024	The plan year ends.
April 2025	The claims runout period for the preceding plan year ends.



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May 2025	DFS collects premium, claims, and enrollment data from insurers and information on enrollment for consumers 200 – 250% of the FPL in the Essential Plan.
June 2025	DFS calculates final reimbursements (and reconciliation compared to initial estimates) to insurers.
July 2025	NYSOH issues final reimbursement to insurers.

Appendix: DFS Instructions to Insurers on Estimating the Impact of the 1332 Waiver in 2024 Rate Filings

The information below was sent to health plan actuaries in order to provide guidance on estimating the impact of the 1332 waiver in 2024 rate filings.

Data Request

Attention Health Plan Actuaries:

Please submit your response to this data request using the attached data template. Note that we added a column for “Allowed” claims.

Also, to address the fact that all family members may not be insured under the same policy, when attempting to identify individuals in the 200-250% FPL band, for purposes of determining the appropriate 250% FPL family income in the table below, the following assumptions should be used:

- Single Rating Tier: Assume 1 additional family member (2 in total); and
- Single + Spouse Rating Tier: Assume 1 additional family member (3 in total); and
- Single + Child(ren) Rating Tier: Assume 1 additional family member than what was reported by the policyholder; and
- Single + Spouse + Child(ren) Rating Tier: Assume 0 additional family members (use the number reported by the policyholder); and
- Child Only Rating Tier: Assume 2 additional family members (3 in total); and
- Assume that all individuals enrolled in the “Silver 73%” plan fall into the 200-250% FPL band (even if they are not captured using the assumptions above).

2021 ANNUAL FAMILY INCOME

Family Size	250% FPL
1	32,200
2	43,550
3	54,900
4	66,250
5	77,600
6	88,950
7	100,300
8	111,650
Each add'l person, add:	11,350

Updated Examples:

- **Example 1:**
 - For a single adult purchasing the SLCSF in Albany (1 person being insured):
 - The SLCSF in Albany in 2022 for a single adult purchaser was \$564.85
 - Assume one additional family member per the assumptions above (2 in total)
 - Using the table above, the applicable 2021 Family income is \$43,550
 - $\$43,550 / 12 = \$3,629.17$
 - The maximum amount this policyholder would have paid in 2022 is \$145.17 (4.0% of \$3,629.17) per month
 - Using these assumptions, any policyholder who purchased a single adult SLCSF in Albany who received an APTC of \$419.68 ($\$564.85 - \145.17) per month or more, would fall into the 200-250% FPL band.
- **Example 2:**
 - For a policyholder purchasing a family policy in Albany, where the family is composed of 2 adults and 4 children (6 persons being insured):
 - The SLCSF in Albany in 2022 for a family policy was 1,609.82 ($\$564.85 * 2.85$)
 - Assume no additional family member per the assumptions above (6 in total)
 - Using the table above, the applicable 2021 Family income is \$88,950
 - $\$88,950 / 12 = \$7,412.50$
 - The maximum amount this policyholder would have paid (after consideration of APTC) in 2022 is \$296.50 (4.0% of \$7,412.50) per month
 - Using these assumptions, any policyholder who purchased a family policy in Albany, with 6 family members in total, who received an APTC of \$1,313.32 ($\$1,609.82 - \296.50) per month or more, would fall into the 200-250% FPL band. In addition to the policyholder, any other individuals insured under this policy would also fall in to the 200-250% FPL band.

We expect that the use of these assumptions by all insurers will result in a fairly accurate estimate of the impact. We are also interested in any estimates that you may have prepared using a methodology that differs from the one prescribed above. Once we have received all of the data, we will provide information back to the plans. Insurers should then use that information to develop their own factors for purposes of completing Line 23c of Exhibit 18 for the rate filing that is due on May 10th, 2023.

Summary of Responses

Attention Health Plan Actuaries:

The attached file, “1332 Waiver Response Summary – 4-28-2023.xlsx” includes a summary of the data that was collected for purposes of estimating the impact of New York’s 1332 Waiver, to expand the Essential Plan up to 250% FPL, on 2024 Individual premium rates. This information shows what the impact would have been with respect to calendar year 2022 and should be used to develop your own estimate of the impact on 2024 rates should the Waiver be approved by CMS.

Any impact associated with this item that is included in the 2024 Individual rate application should be expressed as a factor on Line 23c of Exhibit 18 and accompanied by appropriate justification in the Actuarial Memorandum.

Attachment: [1332 Waiver Responses Summary – 4-28-2023.xlsx]:

FPL Band	Metal Level	Member Months	Earned Premiums	Allowed Claims	Paid Claims	Incurred Claims (2022 Claims Paid with run-out through February 2023 including IBNR)
200-250% of Federal Poverty Level (FPL)	Platinum	10,783	10,049,821	17,429,475	16,169,433	16,974,845
200-250% of Federal Poverty Level (FPL)	Gold	26,030	20,158,971	26,971,000	23,859,178	24,664,931
200-250% of Federal Poverty Level (FPL)	Silver	41,280	25,534,396	29,075,371	23,760,448	25,050,459
200-250% of Federal Poverty Level (FPL)	Silver 73%	226,823	138,582,503	128,748,935	105,069,424	108,712,891
200-250% of Federal Poverty Level (FPL)	Bronze	119,983	58,833,932	39,228,683	27,021,429	28,690,439
200-250% of Federal Poverty Level (FPL)	Catastrophic	-	-	-	-	-
200-250% of Federal Poverty Level (FPL)	All Metals	424,899	253,159,623	241,453,465	195,879,911	204,093,566

FPL Band	Metal Level	Member Months	Earned Premiums	Allowed Claims	Paid Claims	Incurred Claims (2022 Claims Paid with run-out through February 2023 including IBNR)
Greater than 250% FPL	Platinum	290,518	269,756,264	541,494,188	511,190,884	530,450,364
Greater than 250% FPL	Gold	395,235	306,917,114	378,803,371	332,063,005	345,869,462
Greater than 250% FPL	Silver	929,848	585,546,193	604,770,307	490,168,273	510,462,546
Greater than 250% FPL	Silver 73%	-	-	-	-	-
Greater than 250% FPL	Bronze	991,074	449,822,556	348,422,157	245,197,058	256,831,627
Greater than 250% FPL	Catastrophic	55,035	11,412,590	10,059,587	6,116,774	6,766,018



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Greater than 250% FPL	All Metals	2,661,710	1,623,454,716	1,883,549,611	1,584,735,994	1,650,380,016
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FPL Band	Metal Level	Member Months	Earned Premiums	Allowed Claims	Paid Claims	Incurred Claims (2022 Claims Paid with run-out through February 2023 including IBNR)
Total Individual Market	Platinum	301,301	279,806,085	558,923,663	527,360,317	547,425,209
Total Individual Market	Gold	421,265	327,076,084	405,774,371	355,922,183	370,534,393
Total Individual Market	Silver	971,128	611,080,589	633,845,678	513,928,720	535,513,005
Total Individual Market	Silver 73%	226,823	138,582,503	128,748,935	105,069,424	108,712,891
Total Individual Market	Bronze	1,111,057	508,656,488	387,650,841	272,218,487	285,522,066
Total Individual Market	Catastrophic	55,035	11,412,590	10,059,587	6,116,774	6,766,018
Total Individual Market	All Metals	3,086,609	1,876,614,339	2,125,003,075	1,780,615,905	1,854,473,582

	Change in Member Months	Change in Earned Premiums	Change in Allowed Claims	Change in Paid Claims	Change in Incurred Claims
Estimated Impact of Removing the 200-250% FPL Population:	-13.8%	-13.5%	-11.4%	-11.0%	-11.0%

FPL Band	Metal Level	Paid/Allowed Ratio	PMPM Earned Premium	PMPM Allowed	PMPM Paid	PMPM Incurred
200-250% of Federal Poverty Level (FPL)	Platinum	97.4%	932.01	1,616.38	1,499.53	1,574.22
200-250% of Federal Poverty Level (FPL)	Gold	91.4%	774.45	1,036.15	916.60	947.56
200-250% of Federal Poverty Level (FPL)	Silver	86.2%	618.57	704.35	575.59	606.84
200-250% of Federal Poverty Level (FPL)	Silver 73%	84.4%	610.97	567.62	463.22	479.29
200-250% of Federal Poverty Level (FPL)	Bronze	73.1%	490.35	326.95	225.21	239.12
200-250% of Federal Poverty Level (FPL)	Catastrophic					
200-250% of Federal Poverty Level (FPL)	All Metals	84.5%	595.81	568.26	461.00	480.33

FPL Band	Metal Level	Paid/Allowed Ratio	PMPM Earned Premium	PMPM Allowed	PMPM Paid	PMPM Incurred
Greater than 250% FPL	Platinum	98.0%	928.54	1,863.89	1,759.58	1,825.88
Greater than 250% FPL	Gold	91.3%	776.54	958.43	840.17	875.10
Greater than 250% FPL	Silver	84.4%	629.72	650.40	527.15	548.97
Greater than 250% FPL	Silver 73%					
Greater than 250% FPL	Bronze	73.7%	453.87	351.56	247.41	259.14
Greater than 250% FPL	Catastrophic	67.3%	207.37	182.79	111.14	122.94
Greater than 250% FPL	All Metals	87.6%	609.93	707.65	595.38	620.05

FPL Band	Metal Level	Paid/Allowed Ratio	PMPM Earned Premium	PMPM Allowed	PMPM Paid	PMPM Incurred
Total Individual Market	Platinum	97.9%	928.66	1,855.03	1,750.28	1,816.87
Total Individual Market	Gold	91.3%	776.41	963.23	844.89	879.58
Total Individual Market	Silver	84.5%	629.25	652.69	529.21	551.43
Total Individual Market	Silver 73%	84.4%	610.97	567.62	463.22	479.29
Total Individual Market	Bronze	73.7%	457.81	348.90	245.01	256.98
Total Individual Market	Catastrophic	67.3%	207.37	182.79	111.14	122.94
Total Individual Market	All Metals	87.3%	607.99	688.46	576.88	600.81

Change in Paid/Allowed Ratio	Change in PMPM Earned Premium	Change in PMPM Allowed	Change in PMPM Paid	Change in PMPM Incurred
0.4%	0.3%	2.8%	3.2%	3.2%

2022 Statewide Loss Ratio Without Waiver	98.8%
2022 Statewide Loss Ratio With Waiver	<u>101.7%</u>
Change in 2022 Statewide Loss Ratio	2.9%