STATE Health & Value STRATEGIES

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State Spotlight:

New York's Essential Plan Expansion: A Novel Use of Section 1332 Waiver Authority

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Overview

On April 1, 2024, New York began covering residents in a new affordable coverage program made possible with a first-of-its-kind section 1332 waiver, reshaping the insurance market and allowing the state flexibility to design a program with people at the center. As a result of new federal regulations, the waiver approval, and significant work by state officials, over 130,000 New Yorkers enrolled in the Essential Plan Expansion with no premiums and minimal cost-sharing requirements in the program's first month.

Background

New York was in a unique position when the Affordable Care Act (ACA) was implemented in 2014. As one of two states with pure community rating, where everyone in the individual market pays the same premium regardless of age, the new subsidies brought thousands of enrollees into the market through the State-Based Marketplace known as New York State of Health. At the time, New York also covered non-citizens who were lawfully present but ineligible for federal Medicaid programs based on their immigration status. This program was paid for with state-only funds, and was required under a state court decision to provide coverage substantially similar to the state's Medicaid program. As such, even though these non-citizen populations became eligible for subsidized Marketplace coverage under the ACA, New York was required to maintain its state-funded Medicaid coverage.

These market conditions led New York to be the second state to take advantage of the ACA's Basic Health Program (BHP). Authorized under section 1331 of the ACA, the BHP allows states to provide coverage to their low-income residents up to 200% of the federal poverty level (FPL) using a Medicaid-like program, rather than the subsidized commercial market options envisioned under the ACA. The BHP was a strategic choice for the state: because of New York's requirement to provide lawfully present non-citizens with coverage comparable to Medicaid, the BHP was a way to meet that requirement while shifting the funding from the state budget to the advance premium tax credit (APTC)-based BHP formula. Additionally, the community rating in New York led to higher-than-average premiums for the BHP population, and subsequently higher APTC amounts to create the budget for BHP coverage.

States that choose the BHP path face some constraints. First, if a state elects the BHP, it becomes the only choice for coverage for the eligible population. States, however, can provide enrollees a choice of carriers offering the BHP with a standardized set of benefits and cost-sharing requirements. Second, states receive 95% of the APTC subsidy from the federal government that the enrollee would otherwise be eligible for if they were enrolled in Marketplace coverage. If coverage is more expensive than 95% of APTC, the state is at risk for excess costs.

In April 2015, New York implemented BHP coverage, known as the "Essential Plan," for the state-funded non-citizen population and began coverage on January 1, 2016, for the remaining 138 to 200% FPL population. Enrollment in the Essential Plan grew from 380,000 in 2016 to 1,123,000 in 2023. The increased APTC subsidies enacted through the American Rescue Plan Act and extended by the Inflation Reduction Act significantly increased the available funds for the Essential Plan. Accordingly, New York eliminated premiums in the Essential Plan and dramatically reduced the out-of-pocket requirements for enrollees. Compared to Marketplace plans, Essential Plan enrollees save an average of $1,600 per year on premiums and out-of-pocket costs.

Exploring the Essential Plan's Expansion

After the introduction of enhanced APTCs in 2021, New York experienced revenues through the federal BHP formula that greatly exceeded the cost of the program, leading to a surplus of funds. Under the rules implementing the BHP, states are required to maintain excess funds in a trust fund which can only be used to support those persons enrolled in BHP coverage, but cannot be used towards efforts to improve affordability of other programs. With the surplus of funding, in 2022, the state sought to expand eligibility limits for the BHP to more low-income residents. New York authorized an expansion of the Essential Plan to New Yorkers up to 250% FPL, including, if necessary, through a section 1332 waiver, which is used by states to create innovative approaches to coverage models.

After the authorization of the Essential Plan expansion, the state began conversations with federal officials about the possible pathways for implementation. The limitations of the BHP were immediately apparent, with a very rigid structure in its statutory construction. It is a binary choice for states—either you offer the BHP (and only the BHP) to the up to 200% FPL population, or you do not. Only the otherwise APTC eligible population up to 200% FPL is eligible. Additionally, section 1331 of the ACA which creates the BHP is not subject to waiver by section 1332. This rigidity meant that New York could not use the existing surplus in the trust fund to cover the costs of expanding the program, nor could it use the excess funding it received on an annual basis for the expansion.

Crafting a Workable Solution

While the BHP could not be waived by section 1332, APTCs, the basis of funding for the BHP, could be waived. This would allow New York, in theory, to collect all of the APTC funds that would be allocated for the BHP population and spend it on a program that was exactly the same as the BHP. Enrollees would see no difference in the coverage as carriers would still be offering the same plans. Only the source of funding would change, relieving the state from the restrictions on who could be covered by the BHP and allowing the Essential Plan expansion to move forward.

On May 12, 2023, New York submitted its waiver application to shift the funding from section 1331 BHP authority to section 1332 waiver authority and by doing so, expanded the eligibility for the Essential Plan. The waiver also proposed quality incentive payments for insurers participating in the Essential Plan, as well as a rebate program for carriers in the individual market to ensure that the shift of enrollees with incomes from 200 to 250% FPL to the Essential Plan did not increase premiums for the remaining individual market enrollees. The waiver also proposed grants to community organizations to support health-related social needs, including food insecurity and environmental support for asthma patients.

The last question for New York was how to utilize the BHP trust fund balance, which by 2023 had grown to $9.8 billion. According to the BHP rules, once the BHP ended, the state would need to repay the federal government the balance. However, the state sought to keep the trust fund balance in the event that the 1332 waiver ended and the BHP would be restarted. As such, the state requested to suspend the BHP for the term of the 1332 waiver. The Centers for Medicare & Medicaid Services was open to the request, but there was no process for a BHP suspension. This was remedied in the November 2023 Medicare Payment Rule, which included a change to BHP regulations allowing a state to suspend the BHP and retain the accrued trust fund.

Waiver Approval and Initial Results

On March 1, 2024, the Departments of Health and Human Services and Treasury approved New York's waiver, allowing New York to move forward with an April 1, 2024 coverage start date. The state automatically transferred individual market enrollees who were newly eligible for the Essential Plan into the new coverage, with the overwhelming majority remaining with the same carrier. The state also launched an outreach effort with community organizations to support new enrollment into the Essential Plan. As of April 7, 2024, just one week into the expansion, New York reported more than 95,000 enrollees in the Essential Plan expansion. There was a decrease of only 62,700 enrollees in the individual market, suggesting that more than 30,000 individuals newly enrolled in coverage because of the expansion.

New York's Essential Plan expansion had envisioned an expansion to Deferred Action on Childhood Arrivals (DACA) recipients on August 1, 2024. The population is already eligible for state-funded Medicaid but the state will transition DACA recipients up to 250% FPL in August. With the recent release of new regulations expanding eligibility for Marketplace and BHP coverage to DACA recipients, New York will be eligible for increased pass through funding to support the coverage.

New York's Essential Plan expansion represents the first section 1332 waiver that fully waives premium tax credits for a population and uses those funds to support more affordable coverage. Other states, however, may be challenged to replicate the New York experience given the state's large difference between Marketplace premiums and BHP coverage costs. Nevertheless, a new frontier in section 1332 waivers opens up new opportunities for innovation and policy development.

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