



New York Lawyers for the Public Interest
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Dear Secretary Becerra and Administrator Brooks-LaSure,

On behalf of New York Lawyers for the Public Interest (NYLPI), I would like to thank the U.S. Department of Health and Human Services and the Center for Medicare and Medicaid Services for the opportunity to provide the following comments about New York's Section 1332 Innovation Waiver Essential Plan Expansion submission.

NYLPI's Health Justice program works to provide comprehensive screenings and legal representation to individuals, particularly those who are in health emergencies, including holistic support by providing our clients information on financial assistance, food banks and housing relief to meet their intersecting needs. The experiences of our clients inform our policy advocacy, and our commitment to seeking health care coverage for all New Yorkers.

NYLPI would like to raise three issues for your consideration as you review New York's submission: (1) the State's Waiver ignores the vast majority of thousands of public comments, which sought to include immigrants; (2) the final Waiver submission is substantially different than the one presented for public comment, spending over \$5.8 billion on non-transparent industry giveaways in lieu of expanding coverage to immigrants; and (3) The barriers our clients face to accessing life saving organ transplants, largely due to their inability to qualify for adequate healthcare insurance, could be mitigated through inclusion in the Essential Plan.

(1) The State's proposed waiver ignores the vast majority of thousands of public comments, which sought to include immigrants.

New York State held two public hearings to gather public comments, as well as accepting virtual submissions. Comments from 26 out of 30 organizations and over 1,600 individuals requested the inclusion of undocumented immigrants through the surplus passthrough funding in the draft submission, and emphasized that the federal and state governments would save over \$1 billion per year in Emergency Medicaid funding. Despite overwhelming support from the majority, the State's final Waiver submission decided against expanding coverage to all immigrants.

(2) The State's final waiver submission was drastically different from the draft waiver, but not aligned with the proposed requests from the majority of public comments.

The final Waiver did not reflect the changes that a large number of New Yorkers requested. Instead of expanding coverage for immigrants, the Waiver put forth proposals to spend over \$5.8 billion in industry giveaways for long term coverage and other funding for the hospitals that was not asked for by the public. The Final Waiver provides almost no concrete details about the nature of these

new expenditures of public funds. NYLPI urges CMS to require the State to provide the public an opportunity to review these new spending allocations in detail.

(3) The barriers our clients face to life-saving and economically sensible care due to their inability to access adequate healthcare insurance, could be mitigated through inclusion in the Essential Plan.

For example, many of our clients that seek our legal services for assistance with accessing healthcare experience End-Stage Renal Disease (ESRD) and are in need of kidney transplants. Through the State's limited Emergency Medicaid program, they can only access dialysis treatment. However, dialysis is ineffective as a long-term solution, with an approximately 40 percent survival rate of five years after treatment begins. Once a patient is stabilized on dialysis treatment, the best practice is to try to find a transplant as soon as possible. Not only is dialysis an unsustainable long-term treatment, but it can also impose serious, cascading costs on patients and their families. While kidney transplants have a higher up-front cost, numerous studies have found that transplants are a more cost-effective solution in the long-term than ongoing dialysis.¹ Ultimately the most impactful and economically sensible solution would be by expanding eligibility for the state's Essential Plan or Medicaid programs to every New Yorker regardless of immigration status. This Waiver presents an opportunity to advance equitable access to kidney transplantation, and to allow New York State to save millions of dollars in doing so.

NYLPI has represented numerous clients whose ability to work, spend time with loved ones, and engage meaningfully in their communities is severely limited by ESRD and other serious health conditions. We believe that health is a human right, and that our clients' need for medical care can be met through access to comprehensive healthcare insurance and expansion of the Essential Plan. We hope the concerns we have identified above will help inform a close examination of New York's proposed Section 1332 Waiver to determine if there is a path forward to covering immigrants who are otherwise ineligible for public coverage.

Thank you for the opportunity to provide public comment.

Noelle Peñas
Health Justice Community Organizer
New York Lawyers for the Public Interest

NYLPI has fought for more than 40 years to protect civil rights and achieve lived equality for communities in need. Led by community priorities, we pursue health, immigrant, disability, and

¹ For example, see David Axelrod, et al. An economic assessment of contemporary kidney transplant practice, 18 Am Journal Transplantation, 1168 (January, 2018), available at: <https://pubmed.ncbi.nlm.nih.gov/29451350/>. See also Robert A. Wolfe, et al., Comparison of Mortality in All Patients on Dialysis, Patients on Dialysis Awaiting Transplantation, and Recipients of a First Cadaveric Transplant, 341 N. Engl. J. Med. 1725 (Dec. 2, 1999), available at: <http://www.nejm.org/doi/full/10.1056/NEJM199912023412303#t=article>.

environmental justice. NYLPI combines the power of law, organizing, and the private bar to make lasting change where it's needed most.

NYLPI's Health Justice Program brings a racial equity and immigrant justice focus to health care advocacy, including ongoing work addressing the human rights crisis in immigration detention and advocating for healthcare for all New Yorkers.