



JUSTICE THROUGH COMMUNITY POWER

December 1, 2023

Re: New York Section 1332 State Innovation Waiver

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 (CMS) for the opportunity to provide the following comments about New York's Section 1332 Innovation Waiver addendum 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.

With our client communities in mind, we write to: (1) Urge CMS and New York State policymakers to revise the Waiver to use part of the \$7.8 billion surplus to cover immigrants; (2) Urge CMS and New York State policymakers to consider policy vehicles that cover more New Yorkers at an affordable price; and (3) Support the State's decision to eliminate the \$15 monthly premium.

(1) NYLPI urges CMS and New York State policymakers to revise the Waiver to use part of the \$7.8 billion surplus to cover immigrants.

The State's revised estimates indicate that there will be a \$7.8 billion surplus after five years. The State proposes using the majority of this surplus for provider and carrier rate increases. Instead of funneling this money to providers and plans, the State and CMS should revise the Waiver to cover uninsured immigrant New Yorkers. This would be consistent with the overwhelming majority of public comments received by the State on its Waiver proposal. The surplus pass-through funds easily cover over 150,000 immigrants per year, and would still provide over \$5.8 billion in funding for the healthcare industry imbedded into the 1332 Waiver proposal.

Additionally, the State proposes providing an additional \$297 million to the insurance industry through the Insurer Reimbursement Implementation Plan. This seeks to provide over \$60 million per year to the insurance industry in an effort to offset the lost premiums it will incur as 70,000 New Yorkers (with incomes between 200-250% of FPL) move from individual market Qualified Health Plans to Essential Plans. 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.” Carriers should not receive such windfalls.

This is a regressive proposal benefiting those with incomes over 600 percent of the FPL, who are ineligible for subsidies (people earning over \$180,000 a year for a family of four). The IRIP 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).

(2) Instead of approving the IRIP addendum, CMS and New York State policymakers should work together to cover more New Yorkers at an affordable price.

A health care system that is truly just and equitable must also ensure comprehensive coverage for all New Yorkers, including undocumented immigrants. Authorization of the Waiver while it excludes hundreds of thousands of immigrants New Yorkers is a major missed opportunity to support equitable access to healthcare through a fiscally responsible public health initiative that was promised nearly two years ago. We urge CMS and policymakers to ensure the Waiver is inclusive to immigrants, which would save lives, save money, and improve health across the city. The surplus funding can be used to cover some or all New York immigrants who are otherwise ineligible for coverage. Under New York's current and inequitable health care system, immigrants are forced to resort to emergency care and costly treatments that they would be able to avoid if they were eligible for primary and preventative care. Increasing access to healthcare would bring better risk and would drive down premiums, generating savings for the federal government and for health systems across New York State.

(3) NYLPI supports the State's decision to eliminate the originally proposed \$15 monthly premium for new enrollees with incomes between 200-250% of the Federal Poverty Level.

These premiums would have provided an administrative burden for consumers, plans, and patients that would have led to coverage gaps, medical debt, and fiscal uncertainty. Removing the premium increases accessibility for enrollees, many of which constitute the client communities that NYLPI serves.

NYLPI has represented numerous clients whose ability to work, spend time with loved ones, and engage meaningfully in their communities is severely limited by serious and life-threatening 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 addendum to the 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