



May 19th, 2023

The Honorable Xavier Becerra
Secretary
United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra,

We would like to express our support for New York Governor Hochul's efforts to pursue the State Innovation Waiver. It is our understanding that the New York State Department of Health is reaching out with a request for clarity on the use of the Basic Health Program Trust Fund to offer basic health coverage to New Yorkers who are currently ineligible because of their immigration status. We are grateful for the commitment by our Governor to further understand how we can expand coverage options for all New Yorkers.

On behalf of the undersigned New York Legislators, we respectfully request your assistance in clarifying the use of federal funding to extend health coverage to residents of New York State who are currently ineligible for federal financial participation, either through the Medicaid program or Basic Health Program, because of their immigration status.

We are aware that other states (e.g. Colorado¹ and Washington²) have successfully secured State Innovation Waiver authorization under Section 1332 of the Affordable Care Act to establish "passthrough" funding to support the provision of health coverage for otherwise ineligible immigrants. New York State currently spends over \$1 billion a year on our Emergency Medicaid program, with the vast majority of the benefits of this program being provided to immigrants who are otherwise ineligible for comprehensive Medicaid or the Basic Health Program due to their immigration status. As New York continues to create unprecedented infrastructure to support the influx of asylum seekers and migrants being transported from other states, we believe there is an opportunity for federal, state, and local governments to share in significant Emergency Medicaid savings by exploring Sections 1331 and 1332 funding to offer health coverage to this population. Accordingly, we write to ask you to respond to the following questions.

¹ U.S. Department of Health and Human Services, Colorado Option 1332 State Innovation Waiver Amendment, Special Terms and Condition, 1332 June 23, 2022, page 4 & note 6, available at:

<https://www.cms.gov/files/document/1332-co-amendment-approval-stcs.pdf>

² U.S. Department of Health and Human Services, Washington State Section 1332 Waiver Application, Federal Questions and State Responses, December 2022, page 1, available at:

<https://www.cms.gov/files/document/1332-federal-questions-wa-responses-waiver-application.pdf>

New York State has drafted a Section 1332 Waiver document for public comment. According to that document, the State of New York will accumulate over \$10.3 billion of surplus funding in the first five years of program operations.³

- Can New York use some or all of the 1332 “passthrough” surplus funding to provide affordable health coverage to immigrants who are ineligible for federal financial participation under the federal Medicaid and Basic Health Program?

We are also seeking your clarification on the use of our Basic Health Program’s existing surplus trust funds. As you are aware, New York State has established a Basic Health Program, known as the Essential Plan, that successfully covers over a million New Yorkers.

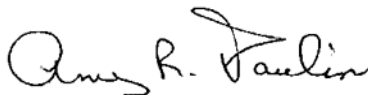
- Can New York use the Basic Health Plan accumulated surplus to fund coverage for immigrants who are otherwise ineligible for healthcare coverage due to their immigration status?
- In the event that New York cannot use the entire Basic Health Plan accumulated surplus, can our state use a portion of the accumulated surplus to facilitate the transition to a 1332 State Innovation program for immigrants who are otherwise ineligible for healthcare coverage due to their immigration status?

Thank you very much for your consideration of these questions. We are optimistic that we can establish a coverage option that will make more efficient use of Section 1332 Waiver funds, while expanding coverage to hundreds of thousands of residents and drastically reducing federal, state, and local expenditures under the Emergency Medicaid program. We look forward to continuing our partnership with you to provide essential health services to the residents of our state.

Regards,



Gustavo Rivera
NYS Senator, 33rd SD
Chair of the Senate Committee
on Health



Amy Paulin
Member of Assembly, 88th AD
Chair of the Assembly
Committee on Health



Jessica González-Rojas
Member of Assembly, 34th AD

³ New York Section 1332 Innovation Waiver Essential Plan Expansion Draft for Public Comment, February 9, 2023, page 12. https://info.nystateofhealth.ny.gov/sites/default/files/NY_1332_Waiver_Draft_Application_Actuarial.pdf

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