



## **RISK OF REPEAL OF THE BASIC HEALTH PROGRAM**

The Basic Health Program (BHP) has been a huge success in New York, with nearly half a million New Yorkers enrolled. The program provided New York the opportunity to offer many consumers a lower-cost health insurance option than was available through New York State of Health. The BHP also generated \$1 billion in state savings. Rarely does a program offer both consumer advantages and fiscal advantages to the state; consequently, it is in the best interest of the state to take advantage of the program for as long as it is available.

New York offers the BHP to qualified individuals through NY State of Health, the state's official health plan marketplace. The 2016-17 Enacted Budget requires the Department of Health to prepare a contingency plan in the event eligibility rules or regulations for the BHP are modified or repealed by the federal government or in the event federal payment is reduced below ninety five percent of the cost of the BHP premium for each enrollee. The federal landscape has not changed since this report was prepared in 2015, therefore the conclusions remain the same. The document describes the coverage options for BHP enrollees should the program be repealed.

### **BACKGROUND**

Section 1331(a) of the Affordable Care Act (ACA) directs the Secretary of Health and Human Services to establish a Basic Health Program that provides a new option for states to offer health coverage for individuals with family incomes between 138-200 percent of the Federal Poverty Level (FPL) and for individuals with family incomes from 0-200 percent FPL who are lawfully present in the United States but do not qualify for Medicaid due to their immigration status. The BHP was intended to offer a more affordable coverage option for individuals than the Qualified Health Plans (QHP) available through existing state and federal marketplaces. In March 2014, The Centers for Medicare and Medicaid Services (CMS) issued the final regulations governing the Basic Health Program.

The FY 2015 Enacted Budget established the BHP in New York. The state then prepared and submitted for CMS review, a Blueprint describing how the program would be implemented, including: the administration of the trust fund, eligibility and enrollment, standard health plan contracting, premiums and cost-sharing, and program operations. The state received federal approval to establish a BHP on March 27, 2015.

The BHP, which is branded in New York as the Essential Plan (EP), is available to consumers who are between the ages of 19 and 64, not eligible for Medicaid or the Children's Health Insurance Program (CHIP) and who have income at or below 200 percent of the FPL (\$23,760 for a household of one; \$48,600 for a household of four in 2016). Consumers with income at or below 150 percent of the FPL (\$17,820 for a household of one; \$36,450 for a household of four in 2016) have no monthly premium. Those with income greater than 150 percent of the FPL, but at or below 200 percent of the FPL have a low monthly premium of \$20. In accordance with federal requirements, all plans cover essential health benefits including inpatient and outpatient care, physician services, diagnostic services and prescription drugs among others, with no annual deductible and low out-of-pocket costs. Preventive care such as routine office visits and recommended screenings have no out-of-pocket cost to enrollees.



## IMPLEMENTATION

New York began the transition to the Essential Plan on April 1, 2015. Lawfully present non-citizens with incomes below 138% of the federal poverty level who were enrolled in Medicaid, but not eligible for Federal Financial Participation (FFP), were transitioned to the Essential Plan. During the transition period, these individuals were permitted to remain in their Medicaid managed care plans. Individuals in the transition population in NY State of Health were moved to Essential Plan issuers on January 1, 2016. Those individuals in the transition population in Welfare Management System are being transitioned to an Essential Plan insurer at their renewal in 2016.

More New Yorkers had the opportunity to enroll in the Essential Plan during the 2016 NY State of Health open enrollment period which began on November 1, 2015. For eligible consumers who were enrolled in Qualified Health Plan (QHP) coverage through NY State of Health, the Essential Plan reduced their monthly premium costs and their out-of-pocket costs by an average of \$1,100 per person. Enrollment in the Essential Plan is available throughout the year through the Marketplace website, by telephone or in-person with one of the trained assistors.

Thirteen issuers were certified to offer the Essential Plan for the 2016 coverage year. They are:

- Affinity
- Crystal Run
- Excellus (also Univera Healthcare)
- EmblemHealth
- Fidelis
- Empire Blue Cross Blue Shield HealthPlus
- Healthfirst
- Independent Health
- MetroPlus
- MVP
- United Healthcare
- Wellcare
- Yourcare

Of the 13 plans offering the Essential Plan, all but three offer Medicaid, Child Health Plus and Qualified Health Plans (QHP). Crystal Run, Empire Blue Cross Blue Shield HealthPlus and Yourcare are not offering QHPs in 2016. CDPHP, which offers Medicaid, Child Health Plus and QHPs has elected not to participate in the EP, as has Total Care, which offers Medicaid and Child Health Plus plans. Empire Blue Cross/Blue Shield, Health Now, North Shore LIJ/Care Connect and Oscar all offer QHPs, but are not participating in the Essential Plan in 2016.

As of April 2016, nearly 500,000 individuals were enrolled in Essential Plan. About 55% of enrollees have income below 150% of FPL and 45% of enrollees have income between 150% of FPL and 200% of FPL. Approximately 20 percent of Essential Plan enrollees are new to coverage with the remaining 80 percent having been enrolled in either Medicaid or a QHP prior to the availability of the Essential Plan.



Funding for the Essential Plan is provided through federal tax and cost sharing credits, which are paid directly to the state by the federal government. In addition to providing a lower cost health insurance option for consumers, the Essential Plan is expected to generate over \$800 million in savings to the state's Medicaid program each year.

## IMPACT OF A REPEAL OF THE BASIC HEALTH PROGRAM

The risk of the BHP provision of the ACA being repealed by Congress is low. No legislation has been passed by both houses of Congress to repeal or modify the BHP. Any attempt to repeal the ACA, in whole or in part, will likely be vetoed by President Obama.

In the event the BHP is repealed or modified in such a way as to make the continuation of the program in New York unsustainable, individuals enrolled in the program would be transitioned back to QHPs or to Medicaid based on the income and immigration status eligibility rules in place prior to the implementation of the BHP.

In the event individuals need to be transitioned to other programs, it will be critical that any legislation to repeal the BHP, if enacted, include adequate time to transition enrollees to avoid disruptions in coverage. The smoothest approach would be to transition individuals to another program at the next open enrollment following the repeal of the BHP or at renewal.

If the BHP is repealed, the two populations requiring transition would be handled as follows:

- **Individuals eligible for QHPs:** If the BHP is repealed, individuals enrolled in BHP with income between 138 and 200 percent of the FPL would once again be eligible for tax credits with cost-sharing reductions. These individuals would lose the lower premiums and cost-sharing of BHP, but would have a coverage alternative likely in the same health plan. Some of these individuals may choose not to obtain QHP coverage at the higher cost, but they may face a tax penalty if they are uninsured.
- **Individuals eligible for Medicaid:** Legally residing immigrants with income below 138% of the FPL in BHP would revert to Medicaid eligibility if BHP is repealed. In 2001, the New York State Court of Appeals ruled in *Aliessa v. Novello* that New York must provide state and local funded Medicaid to lawfully residing immigrants who had been excluded from access to the federal Medicaid program by The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The *Aliessa* decision ruled that the 5-year ban for qualified aliens and the ineligibility of Persons Residing Under the Color of Law (PRUCOL) for Medicaid coverage violated the Equal Protection Clause of the New York State Constitution and also the United States Constitution. If BHP is repealed, the immigrants covered by BHP that are income eligible for Medicaid would become Medicaid eligible once again, with the cost fully supported by the state.

The repeal of BHP would result in a net cost to the state. The state would save money on BHP enrollees who would transition back to QHPs as it would no longer bear the monthly premium costs for these individuals, but would incur significant costs for those lawfully residing immigrants who would transition back to Medicaid without FFP. Any repeal of the BHP, should it occur, is unlikely to occur without other changes to the ACA. Other potential changes would



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need to be analyzed in the context of overall health insurance options in the state before specific proposals could be advanced.