DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S3-14-28
Baltimore, Maryland 21244-1850

CENTERS FOR MEDICARE & MEDICAID SERVICES
CENTER FOR MEDICAID & CHIP SERVICES

Financial Management Group

December 8, 2021

Brett Friedman
Acting State Medicaid Director
New York State Department of Health
99 Washington Ave- One Commerce Plaza, Suite 1432
Albany, NY 12210

Reference: TN 17-0015

Dear Mr. Friedman:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 17-0015. Effective January 1, 2017, this amendment proposes add-on payments to Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) providers for state required minimum wage increase. This amendment also makes provisions for ICF/IID ownership and control payments for specified circumstances effective August 1, 2017.

We conducted our review of your submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30), and 1903(a) of the Social Security Act and the implementing Federal regulations at 42 CFR 447.

This is to inform you that Medicaid State plan amendment 17-0015 is approved effective January 1, 2017. The CMS-179 and the amended plan pages are attached.

If you have any additional questions or need further assistance, please contact Novena James-Hailey at (617) 565-1291 or Novena.JamesHailey@cms.hhs.gov.

Sincerely,

[redacted]

Rory Howe
Director

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION	1. TRANSMITTAL NUMBER: 17-0015	2. STATE New York
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE January 1, 2017	

5. TYPE OF PLAN MATERIAL *(Check One)*:

☐ NEW STATE PLAN ☐ AMENDMENT TO BE CONSIDERED AS NEW PLAN ☒ AMENDMENT

COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT *(Separate Transmittal for each amendment)*

6. FEDERAL STATUTE/REGULATION CITATION: §1905(r)(5) of the Social Security Act and 42 CFR 447	7. FEDERAL BUDGET IMPACT: (in thousands) a. FFY 01/01/17-09/30/17 $ 744.35 b. FFY 10/01/17-09/30/18 $ ~~4,279.91~~ 4,288.45
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 4.19-D – Page ~~116(b), 116(c)~~ 22(c) 22(d) 24	8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: Attachment 4.19-D – Page ~~116(b)~~ 24 New

10. SUBJECT OF AMENDMENT:
Minimum Wage – ICF
(FMAP = 50%)

11. GOVERNOR'S REVIEW *(Check One)*:
☒ GOVERNOR'S OFFICE REPORTED NO COMMENT
☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED
☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL
☐ OTHER, AS SPECIFIED:

12. SIGNATURE OF STATE AGENCY OFFICIAL: [redacted]	16. RETURN TO: New York State Department of Health Bureau of Federal Relations & Provider Assessments 99 Washington Ave – One Commerce Plaza Suite 1430A Albany, NY 12210
13. TYPED NAME: Jason A. Helgerson	
14. TITLE: Medicaid Director Department of Health	
15. DATE SUBMITTED: NOV 18 2016	

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17. DATE RECEIVED: November 18, 2016	18. DATE APPROVED: December 8, 2021
PLAN APPROVED – ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL: January 1, 2017	20. SIGNATURE OF REGIONAL OFFICIAL: [redacted]
21. TYPED NAME: Rory Howe	22. TITLE: Director, Financial Management Group

23. REMARKS:

FORM HCFA-179 (07-92)

New York
22(c)

c. Minimum Wage Adjustment - Effective January 1, 2017, and every January 1 thereafter until the minimum wage reaches the state statutorily described per hour wage as shown below, a minimum wage add-on will be developed and applied to all ICF/IID rates.

Minimum Wage Region	31-Dec-16	31-Dec-17	31-Dec-18	31-Dec-19	31-Dec-20	31-Dec-21
New York City	$11.00	$13.00	$15.00	$15.00	$15.00	$15.00
Nassau, Suffolk & Westchester	$10.00	$11.00	$12.00	$13.00	$14.00	$15.00
Remainder of State	$9.70	$10.40	$11.10	$11.80	$12.50	$13.20

The minimum wage adjustment will be developed and implemented as follows:

1. Minimum wage costs will mean the additional costs incurred beginning January 1, 2017 and thereafter, as a result of New York State statutory increases to minimum wages.

2. The 2017 facility specific minimum wage add-on will be developed based on collected survey data received and attested to by ICF/IID providers. If a facility does not submit a survey, the minimum wage add-on will be calculated based on the facility's Consolidated Fiscal Report wage data from the 2014 ICF/IID cost report data. In the subsequent year, the Department will survey providers, utilizing the methodology employed in year one. Once the costs are included in a CFR utilized in a base year, such reimbursement will be excluded from the add-on. If a facility fails to submit both the attested survey and the CFR cost report, the facility's minimum wage add-on will not be calculated.

   a. Minimum wage cost development based on survey data collected.
      i. Survey data will be collected for facility specific wage data.
      ii. Facilities will report by wage bands, the total count of FTEs and total hours paid to all employees (contracted and non-contracted staff) earning less than the statutory minimum wage applicable for each region.
      iii. Facilities will report an average fringe benefit percentage for the employees directly affected by the minimum wage increase.
      iv. The minimum wage costs are calculated by multiplying the total hours paid by the difference between the statutory minimum wage and the midpoint of each wage band where the facility has reported total hours paid. To this result, the facility's average fringe benefit percentage is applied and added to the costs.

   b. Minimum wage cost development based on the CFR cost report data.
      i. The average hourly wages of employees where the reported average hourly wage is below the regional statutory minimum wage are identified.
      ii. The total payroll hours of the employees identified are then multiplied by the regional statutory minimum wage resulting in a projected payroll. The actual payroll as reported in the cost report is then subtracted from the projected payroll resulting in the expected wage costs increase.
      iii. The facility's fringe benefit costs directly affected by the wage increase are identified, and the average fringe benefit percentage is calculated.
      iv. The fringe benefit percentage is applied to the increased wage costs and added resulting in the minimum wage costs.

New York
22(d)

3. The facility specific cost amount will be adjusted by a factor calculated by dividing the facility's average dollar per hour under minimum wage by the regional average. The resulting amount will be divided by patient days to arrive at a rate per diem add-on, which will be applied to only Medicaid days for purposes of Medicaid reimbursement.

4. In subsequent years, until the minimum wage is completely implemented statewide, the Department will survey facilities utilizing the methodology employed in year one. If a facility fails to submit the minimum wage survey, the calculation for minimum wage costs will default to the personnel wage data reported on the facility's latest available CFR cost report. If a facility fails to submit both the survey and the CFR cost report, its minimum wage add-on will not be calculated. Once the minimum wage costs are included in the development of the ICF/IID rate, the minimum wage add-on will be excluded from the rate.

5. Minimum Wage Reconciliation - After the end of each calendar year, the Department of Health will survey providers to obtain the following information for the purpose of reconciling annual minimum wage reimbursement. The state will release the reconciliation survey by the end of March and providers will have two weeks to complete the survey or request an extension if a provider determines it is unable to complete the survey within that time. Approval of extensions, and the time of the extension, is at the discretion of the state. If the reconciliation survey is not submitted within the two weeks or within the extension time frame, should one be granted, the provider's minimum wage add-on for the calendar year covered by the survey will be recouped.

    a. Total annual minimum wage funding paid to the provider (as determined from the minimum wage add-on to claims paid for services rendered in the prior calendar year) for the Medicaid share of the minimum wage law increase requirement. (This information will be supplied by the Department of Health.) Medicaid's share is the percentage of minimum wage costs that are attributable to Medicaid services based on the proportion of Medicaid services to a provider's total services.
    b. Medicaid's share of the total amount the provider was obligated to pay to bring salaries up to the minimum wage for the calendar year. (This information will be completed by the provider.)
    c. Minimum wage funds to be recouped or additional funds to be received by the provider. (This information will be completed by the provider.) This will be the difference between the amount paid to the provider for the Medicaid share of the minimum wage law increase requirement and the corresponding amount the provider determined it was actually obligated to pay.
    d. The state agency will review providers' submissions for accuracy and reasonableness, following which it will process associated payments and recoupments via retroactive per unit rate adjustments as quickly as practical thereafter.

6. The agency's Chief Executive Officer or Chief Financial Officer must sign an Attestation verifying the data that is supplied in the survey.

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(13) Rate Corrections

i. Arithmetic or calculation errors will be adjusted accordingly in instances that would result in an annual change of $5,000 or more in a provider's annual reimbursement for ICFs/IID.

ii. In order to request a rate correction in accordance with paragraph i. of this section, the provider must send to the Department of Health its request by certified mail, return receipt requested, within ninety days of the provide receiving the rate computation or within 90 days of the first day of the rate period in question, whichever is later.

(14) Specialized Populations Funding

i. Notwithstanding any other provisions of this Attachment, rates for individuals identified by OPWDD as qualifying for specialized populations funding will be as follows:

ii. For individuals initially identified as qualifying for specialized populations funding, a fee schedule can be found using the link below:

https://www.health.ny.gov/health_care/medicaid/rates/mental_hygiene/2014rates.htm

iii. The tax assessment as described in paragraph (6) will be applied to these rates.

(15) Changes in Ownership and Control

i. The following will be effective beginning August 1, 2017. Where a non-state governmental provider or voluntary provider ceases to operate an ICF/IID due to:

(a) a limitation, suspension, revocation or surrender of that provider's operating certificate;
(b) bankruptcy or other financial or operational distress; or
(c) dissolution of the provider under State Law;

and there arises an emergency situation of a loss of services to individuals, OPWDD will transfer operation of the affected provider's ICF/IID services to another non-governmental provider or voluntary provider at a temporarily enhanced reimbursement rate as described below.

In those emergency situations, the voluntary provider assuming the transferred services will be reimbursed at a rate which is the higher of the two providers' rates (hereafter "higher of rate"). The higher of rate will be in effect until a full year's costs of providing services to the individual(s) impacted by the transfer of services is reflected in the assuming provider's base year CFR. If the assuming provider does not currently operate an ICF/IID but qualifies for the higher of rate, the rate will be the higher of the affected provider's rate or the regional average rate for the ICF/IID services.

ii. In situations where a non-state governmental provider or voluntary provider ceases to operate an ICF/IID due to circumstances other than those specified in paragraphs (15)(i)(a), (15)(i)(b), (15)(i)(c) or there is no emergency situation of a loss of services to individuals, any provider assuming the operation of those services will not be eligible for a temporarily enhanced reimbursement rate. The assuming provider will use their rate as calculated for all of the individuals for which they are taking over services. If the assuming provider does not currently operate an ICF/IID, the assuming provider will receive the affected provider's rate for the ICF/IID services.