

## **Table of Contents**

**State/Territory Name: NY**

**State Plan Amendment (SPA) #: 22-0007**

This file contains the following documents in the order listed:

- 1) Approval Letter
- 2) CMS 179 Form/Summary Form (with 179-like data)
- 3) Approved SPA Pages

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

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



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**Financial Management Group**

March 6, 2024

Amir Bassiri  
Medicaid Director  
New York State Department of Health  
99 Washington Ave – One Commerce Plaza Suite 1432  
Albany, NY 12210

Reference: TN 22-0007

Dear Medicaid Director:

We have reviewed the proposed amendment to Attachment 4.19-D of your Medicaid State plan submitted under transmittal number (TN) 22-0007. This amendment proposes to provide a supplemental payment, which will allow eligible nursing homes to increase resident facing staffing services.

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 Subpart C.

This is to inform you that Medicaid State plan amendment NY-22-0007 is approved effective April 1, 2022. The CMS-179 and the amended plan page(s) are attached.

If you have any additional questions or need further assistance, please contact Kristina Mack at 617-565-1225 or [Kristina.Mack-Webb@cms.hhs.gov](mailto:Kristina.Mack-Webb@cms.hhs.gov).

Sincerely,



Rory Howe  
Director

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL  
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

|   |                       |
|---|-----------------------|
| 1. TRANSMITTAL NUMBER<br><u>2 2 — 0 0 0 7</u>   | 2. STATE<br><u>NY</u> |
| 3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT<br><input checked="" type="radio"/> XIX <input type="radio"/> XXI |                       |

TO: CENTER DIRECTOR  
CENTERS FOR MEDICAID & CHIP SERVICES  
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE  
**April 1, 2022**

5. FEDERAL STATUTE/REGULATION CITATION  
~~§ 1902(a) of the Social Security Act and 42 CFR 447~~ **1905(a)(4)(A) Nursing Facility Services**

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)  
a. FFY 04/01/22-09/30/22 \$ 46,750,000  
b. FFY 10/01/22-09/30/23 \$ 93,500,000 **46,750,000\***

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT  
  
Attachment 4.19-D Part I: Page(s): 110(d)(32), 110(d)(32.1), 110(d)(32.2)


8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)  
  
New

9. SUBJECT OF AMENDMENT  
  
Nursing Home Reforms

10. 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:

11. SIGNATURE OF STATE AGENCY OFFICIAL  


12. TYPED NAME  
Amir Bassiri

13. TITLE  
Acting Medicaid Director

14. DATE SUBMITTED  
June 30, 2022

15. RETURN TO  
New York State Department of Health  
Division of Finance and Rate Setting  
99 Washington Ave – One Commerce Plaza  
Suite 1432  
Albany, NY 12210


**FOR CMS USE ONLY**

16. DATE RECEIVED  
June 30, 2022

17. DATE APPROVED  
March 6, 2024

**PLAN APPROVED - ONE COPY ATTACHED**

18. EFFECTIVE DATE OF APPROVED MATERIAL  
April 1, 2022

19. SIGNATURE OF APPROVING OFFICIAL  


20. TYPED NAME OF APPROVING OFFICIAL  
Rory Howe

21. TITLE OF APPROVING OFFICIAL  
Director, Financial Management Group

22. REMARKS  
Pen and Ink changes

Box 5: Federal Statute/Regulation Citation: 1905(a)(4)(A) Nursing Facility Services

Box 6: Federal Budget Impact (Whole Dollars)  
a. FFY 04/01/22 – 09/30/22: \$46,750,000  
b. FFY 10/01/22 – 09/30/23: \$46,750,000\* \*through 3/31/23.

New York  
110(d)(32)

**1905(a)(4)(A) Nursing Facility Services**

**Minimum Staffing Requirements for Nursing Homes**

Effective for rate year April 1, 2022 through March 31, 2023, the State will distribute \$187 million to Qualified facilities for the purposes of meeting the following minimum staffing requirements.

**1. Minimum Direct Resident Care Spending**

Nursing homes will be required to spend a minimum of 40 percent of revenue on resident-facing staffing and 70 percent of revenue on direct resident care, provided that 15 percent of costs associated with resident-facing staffing contracted out by a facility for services provided by registered professional nurses, licensed practical nurses, or certified nurse aides who have completed certification and training approved by the department will be deducted from the calculation of the amount spent on resident-facing staffing and direct resident care.

Additionally, nursing home total operating revenues must not exceed total operating and non-operating expenses by more than five percent of total operating and non-operating expenses.

Excess revenues and deficiencies in spending on resident-facing staffing and direct resident care will be recouped by the state, effective upon commencement of compliance determinations for the calendar year 2022.

- a. "Revenue" will mean the total operating revenue from or on behalf of residents of the residential health care facility, government payers, or third-party payers, to pay for a resident's occupancy of the residential health care facility, resident care, and the operation of the residential health care facility as reported in the residential health care facility cost reports submitted to the department; provided, however, that revenue will exclude the average increase in the capital portion of the Medicaid reimbursement rate from the prior three years, the capital portion of the Medicaid reimbursement rate for all nursing homes with a CMS Overall Rating of 4 or 5, grant funds from the federal government for reimbursement of COVID-19 pandemic-related expenses, and funding received as reimbursement for residential health care facilities assessment.
- b. "Resident-facing staffing" will include all staffing expenses in the ancillary and program services categories of the residential health care cost reports.
- c. "Direct resident care" will include all expenses in the following categories of the residential health care cost reports: (i) Nonrevenue Support Services - Plant Operation & Maintenance, Laundry and Linen, Housekeeping, Patient Food Service, Nursing Administration, Activities Program, Nonphysician Education, Medical Education, Medical Director's Office, Housing, Social Service, Transportation; (ii) Ancillary Services - Laboratory Services, Electrocardiology, Electroencephalography, Radiology, Inhalation Therapy, Podiatry, Dental, Psychiatric, Physical Therapy, Occupational Therapy, Speech/Hearing Therapy, Pharmacy, Central Services Supply,

TN           #22-0007          

Approval Date           March 6, 2024          

Supersedes TN           #NEW          

Effective Date           April 01, 2022

New York  
110(d)(32.1)

**1905(a)(4)(A) Nursing Facility Services**

**Minimum Staffing Requirements for Nursing Homes (continued)**

**1. Minimum Direct Resident Care Spending (continued)**

- c. Medical Staff Services provided by licensed or certified professionals including and without limitation Registered Nurses, Licensed Practical Nurses, and Certified Nursing Assistant; and (iii) Program Services - Residential Health Care Facility, Pediatric, Traumatic Brain Injury (TBI), Autoimmune Deficiency Syndrome (AIDS), Long Term Ventilator, Respite, Behavioral Intervention, Neurodegenerative, Adult Care Facility, Intermediate Care Facilities, Independent Living, Outpatient Clinics, Adult Day Health Care, Home Health Care, Meals on Wheels, Barber & Beauty Shop, and Other similar program services that directly address the physical conditions of residents. Direct resident care does not include, at a minimum and without limitation, administrative costs (other than nurse administration), capital costs, debt service, taxes (other than sales taxes or payroll taxes), capital depreciation, rent and leases, and fiscal services.
- d. "Cost Report" will mean the annual financial and statistical report (RHCF IV) submitted to the department which includes the residential health care facility's revenues, expenses, assets, liabilities, and statistical information.
- e. "Hospital-Based Nursing Homes" will mean nursing homes that are required to complete a RHCF II Cost Report. Hospital-based nursing homes will be required to provide supplementary data to calculate revenue, resident-facing staffing, and direct resident care costs because their cost report data does not include this information.

**2. Supplemental Payment to Qualified Facilities**

Qualified facilities are those that met the requirement to spend 40 percent or more of revenue on resident-facing staffing and 70 percent or more of revenue on direct resident care and whose total operating revenues did not exceed total operating and non-operating expenses by more than five percent of total operating and non-operating expenses.

- a. The facility's percentage of revenue spent on resident-facing staffing is calculated by dividing a facility's resident-facing staffing expense by the facility's total revenue.
- b. The facility's percentage of revenue spent on direct resident care is calculated by dividing a facility's direct resident care expense by the facility's total revenue.
- c. The facility's percentage of excess revenue is calculated by subtracting a facility's total operating expenses and total nonoperating expenses from the facility's total operating revenue, and dividing this calculation by the sum of the facility's total operating and non-operating expenses.

TN           #22-0007          

Approval Date           March 6, 2024          

Supersedes TN           #NEW          

Effective Date           April 01, 2022

New York  
110(d)(32.2)

**1905(a)(4)(A) Nursing Facility Services**

**Minimum Staffing Requirements for Nursing Homes (continued)**

**2. Supplemental Payment to Qualified Facilities (continued)**

d. The data used in the calculations of section 2a. and 2b. and 2c. above is as follows:

| State Fiscal Year | State Cost Report |
|-------------------|-------------------|
| FY23              | 2020              |

e. If the percentage calculated in section (2)(a) is equal to or greater than forty percent and the percentage calculated in section (2)(b) is equal to or greater than seventy percent and the percentage calculated in (2)(c) is less than or equal to five percent, then the facility is a Qualified Facility and eligible to receive the supplemental payment. The supplemental payment for each Qualified Facility will be calculated as follows:

- i. Divide the Qualified Facility's total Certified Bed count as reported in the Cost Report by the total Certified Beds for all Qualified Facilities.
- ii. Multiply the value by the total funding available for Qualified Facilities.

f. The State will withhold the Federal Financial Participation (FFP) of excess Medicaid revenues for the claiming period, and return the FFP of any recouped funds to the Centers for Medicaid and Medicare Services in accordance with federal overpayment regulations.

TN           #22-0007          

Supersedes TN   #NEW  

Approval Date   March 6, 2024  

Effective Date   April 01, 2022