



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

National Institutional Reimbursement Team  
Attention: Mark Cooley  
CMS, CMCS  
7500 Security Boulevard, M/S S3-14-28  
Baltimore, MD 21244-1850

DEC 20 2016

RE: SPA #16-0050  
Long Term Care Facility Services

Dear Mr. Cooley:

The State requests approval of the enclosed amendment #16-0050 to the Title XIX (Medicaid) State Plan for long term care facility services to be effective October 1, 2016 (Appendix I). This amendment is being submitted based on State Regulations. A summary of the proposed amendment is provided in Appendix II.

This amendment is submitted pursuant to §1902(a) of the Social Security Act (42 USC 1396a(a)) and Title 42 of the Code of Federal Regulations, Part 447, Subpart C, (42 CFR §447).

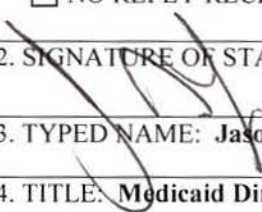
A copy of the pertinent section of proposed State Regulations is enclosed for your information (Appendix III). Copies of the public notice of this proposed amendment, which was given in the New York State Register on October 29, 2014, June 15, 2016, and October 5, 2016, is also enclosed for your information (Appendix IV). In addition responses to the five standard funding questions are also enclosed (Appendix V).

If you have any questions regarding this matter, please do not hesitate to contact John E. Ulberg, Jr., Medicaid Chief Financial Officer, Division of Finance and Rate Setting, Office of Health Insurance Programs at (518) 474-6350.

Sincerely,

Jason A. Helgeson  
Medicaid Director  
Office of Health Insurance Programs

Enclosures  
cc: Mr. Michael Melendez  
Mr. Tom Brady

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>  <b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b>		1. TRANSMITTAL NUMBER: <b>16-0050</b>	2. STATE <b>New York</b>
		3. PROGRAM IDENTIFICATION: <b>TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)</b>	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE <b>October 1, 2016</b>	
5. TYPE OF PLAN MATERIAL <i>(Check One)</i> :  <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT <i>(Separate Transmittal for each amendment)</i>			
6. FEDERAL STATUTE/REGULATION CITATION: <b>§1902(a) of the Social Security Act, and 42 CFR 447</b>		7. FEDERAL BUDGET IMPACT: <i>(in thousands)</i> a. FFY 10/01/16 - 09/30/17 \$ 0.00 b. FFY 10/01/17 - 09/30/18 \$ 4.63	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  <b>Att 4.19-D – Part I Page 47(aa)(6)</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT <i>(If Applicable)</i> :  <b>Att 4.19-D – Part I Page 47(aa)(6)</b>	
10. SUBJECT OF AMENDMENT: <b>Safety Net VAP-Ferncliff NH (Neurodegenerative Group)</b> <b>(FMAP = 50%)</b>			
11. GOVERNOR'S REVIEW <i>(Check One)</i> : <input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL: 		16. RETURN TO: <b>New York State Department of Health Division of Finance &amp; Rate Setting 99 Washington Ave – One Commerce Plaza Suite 1432 Albany, NY 12210</b>	
13. TYPED NAME: <b>Jason A. Helgerson</b>			
14. TITLE: <b>Medicaid Director Department of Health</b>			
15. DATE SUBMITTED: <b>DEC 20 2016</b>			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED:		18. DATE APPROVED:	
<b>PLAN APPROVED – ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL:		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME:		22. TITLE:	
23. REMARKS:			

**Appendix I**  
**2016 Title XIX State Plan**  
**Fourth Quarter Amendment**  
**Amended SPA Pages**

New York  
47(aa)(6)

## Nursing Homes (Continued):

Provider Name	Gross Medicaid Rate Adjustment	Rate Period Effective
Charles T. Sitrin Health Care Center Inc.	\$2,000,000	01/01/2015 – 03/31/2015
	\$591,984	06/16/2016 – 03/31/2017
	\$ 25,817	04/01/2017 – 03/31/2018
Crouse Community Center	\$645,000	01/01/2014 – 03/31/2014
	\$710,000	04/01/2014 – 03/31/2015
	\$65,000	04/01/2015 – 03/31/2016
Eger Health Care and Rehabilitation Center*	\$1,463,808	01/01/2015 – 03/31/2015
	\$1,483,526	04/01/2015 – 03/31/2016
	\$1,480,245	04/01/2016 – 03/31/2017
Elizabeth Seton Pediatric Center*	\$927,714	01/01/2015 – 03/31/2015
	\$940,211	04/01/2015 – 03/31/2016
	\$938,131	04/01/2016 – 03/31/2017
Ferncliff Nursing Home Co Inc.*	\$3,029,944	01/01/2015 – 03/31/2015
	\$1,043,818	04/01/2015 – 03/31/2016
	\$1,341,809	06/16/2016 – 03/31/2017
	\$ 684,373	04/01/2017 – 03/31/2018
	\$ 18,529	04/01/2018 – 03/31/2019
Field Home – Holy Comforter	\$534,500	04/01/2012 – 03/31/2013
	\$534,500	04/01/2013 – 03/31/2014
Gurwin Jewish Nursing and Rehabilitation Center*	\$1,778,009	01/01/2015 – 03/31/2015
	\$1,801,960	04/01/2015 – 03/31/2016
	\$1,797,975	04/01/2016 – 03/31/2017
Heritage Commons Residential Health Care	\$976,816	01/01/2014 – 03/31/2014
	\$834,744	04/01/2014 – 03/31/2015
	\$1,055,223	06/16/2016 – 03/31/2017
Isabella Geriatric Center Inc*	\$2,902,269	01/01/2015 – 03/31/2015
	\$2,941,364	04/01/2015 – 03/31/2016
	\$2,934,859	04/01/2016 – 03/31/2017
Island Nursing and Rehab Center*	\$903,195	01/01/2015 – 03/31/2015
	\$909,966	04/01/2015 – 03/31/2016
	\$908,716	04/01/2016 – 03/31/2017

\*Denotes provider is part of CINERGY Collaborative.

TN #16-0050

Approval Date \_\_\_\_\_

Supersedes TN #16-0027

Effective Date \_\_\_\_\_

**Appendix II  
2016 Title XIX State Plan  
Fourth Quarter Amendment  
Summary**

**SUMMARY**  
**SPA #16-0050**

This amendment proposes to revise the State Plan to modify the listing of residential health care facilities (RHCFs) previously approved to receive temporary rate adjustments under the closure, merger, consolidation, acquisition, or restructuring of a health care provider to include Ferncliff Nursing Home.

**Appendix III**  
**2016 Title XIX State Plan**  
**Fourth Quarter Amendment**  
**Authorizing Provisions**

This rule will have no direct effect on local governments.

**Compliance Requirements:**

Providers that are granted a temporary rate adjustment must submit periodic reports, as determined by the Commissioner, concerning the achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider's approved written proposal.

The rule will have no direct effect on local governments.

**Professional Services:**

No new or additional professional services are required in order to comply with the proposed amendments.

**Compliance Costs:**

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

**Economic and Technological Feasibility:**

Small businesses will be able to comply with the economic and technological aspects of this rule because there are no technological requirements other than the use of existing technology, and the overall economic aspect of complying with the requirements is expected to be minimal.

**Minimizing Adverse Impact:**

This regulation seeks to provide needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

**Small Business and Local Government Participation:**

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

**Rural Area Flexibility Analysis**

**Effect on Rural Areas:**

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Eric	Oneida
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Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

**Compliance Requirements:**

For hospitals that receive the temporary rate adjustment, periodic reports must be submitted concerning the achievement of benchmarks and goals as approved by the Commissioner.

**Professional Services:**

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

**Compliance Costs:**

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

**Minimizing Adverse Impact:**

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

**Rural Area Participation:**

A concept paper was shared with the hospital industry associations, which include members from rural areas. Comments were received and taken into consideration while drafting the regulations. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

**Job Impact Statement**

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation expands the temporary rate adjustment to eligible hospitals that are subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in its service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The proposed regulation has no implications for job opportunities.

**EMERGENCY  
RULE MAKING**

**Temporary Rate Adjustment (TRA) - Residential Health Care Facilities (RHCF) (Nursing Homes)**

**I.D. No.** HLT-14-12-00007-E

**Filing No.** 448

**Filing Date:** 2012-05-11

**Effective Date:** 2012-05-11

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of section 86-2.39 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2808(2-c)(d)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** Public Health Law Section 2808(2-c)(d), as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, specifically provides the Commissioner of Health with authority to issue emergency regulations in order to compute rates of payment for residential health care facilities. It is necessary to issue this regulation on an emergency basis in order to maintain Medicaid beneficiaries' access to services by providing financial relief to eligible providers.

**Subject:** Temporary Rate Adjustment (TRA) - Residential Health Care Facilities (RHCF) (Nursing Homes).

**Purpose:** To provide a TRA to eligible RHCFs subject to or impacted by closure, merger, acquisition, consolidation, or restructuring.

**Text of emergency rule:** Subpart 86-2 of title 10 of NYCRR is amended by adding a new section 86-2.39, to read as follows:

*86-2.39 Closures, mergers, acquisitions, consolidations and*



restructurings. (a) The commissioner may grant approval of a temporary adjustment to the non-capital components of rates calculated pursuant to this subpart for eligible residential health care facilities.

(b) Eligible facilities shall include:

- (1) facilities undergoing closure;
- (2) facilities impacted by the closure of other health care facilities;
- (3) facilities subject to mergers, acquisitions, consolidations or restructuring; or
- (4) facilities impacted by the merger, acquisition, consolidation or restructuring of other health care facilities.

(c) Facilities seeking rate adjustments under this section shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:

- (1) protect or enhance access to care;
- (2) protect or enhance quality of care;
- (3) improve the cost effectiveness of the delivery of health care services; or
- (4) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(d)(1) Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal. Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the facility shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and this Subpart. The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the facility's written proposal as approved by the commissioner and may also require that the facility submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the facility's temporary rate adjustment prior to the end of the specified timeframe.

(2) The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-14-12-00007-P, Issue of April 4, 2012. The emergency rule will expire July 9, 2012.

**Text of rule and any required statements and analyses may be obtained from:** Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

#### **Regulatory Impact Statement**

Statutory Authority:

The statutory authority for this regulation is contained in Section 2808(2-c)(d) of the Public Health Law (PHL) as enacted by Section 95 of Part H of Chapter 59 of the Laws of 2011, which authorizes the Commissioner to promulgate regulations, including emergency regulations, with regard to Medicaid reimbursement rates for residential health care facilities. Such rate regulations are set forth in Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York.

Legislative Objectives:

Subpart 86-2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York, will be amended by adding a new section 2.39 to provide this temporary adjustment to eligible residential health care facilities subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in their service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The temporary rate adjustment shall be in effect for a specified period of time, as approved by the Commissioner, of up to three years. This regulation is necessary in order to maintain beneficiaries' access to services by providing needed relief to providers who meet the criteria.

Proposed section 86-2.39(c) requires providers seeking a temporary rate adjustment to submit a written proposal demonstrating that the additional resources provided by a temporary rate adjustment will achieve one or more of the following: (i) protect or enhance access to care; (ii) protect or enhance quality of care; (iii) improve the cost effectiveness of

the delivery of health care services; or (iv) otherwise protect or enhance the health care delivery system, as determined by the Commissioner. The proposed amendment permits the Commissioner to establish benchmarks and goals, in conformity with a provider's written proposal as approved by the Commissioner, and to require the provider to submit periodic reports concerning the provider's progress toward achievement of such. Failure to achieve satisfactory progress in accomplishing such benchmarks and goals, as determined by the Commissioner, shall be a basis for ending the provider's temporary rate adjustment prior to the end of the specified timeframe.

Needs and Benefits:

In the center of a changing health care delivery system, the closure of a health care provider within a community often happens without adequate planning of resources for the remaining health care providers in the service delivery area. In addition, maintaining access to needed services while also maintaining or improving quality becomes challenging for the remaining providers. The additional reimbursement provided by this adjustment will support the remaining providers in achieving these goals, thus improving quality while reducing health care costs.

Costs:

Costs to Private Regulated Parties:

There will be no additional costs to private regulated parties. The only additional data requested from providers would be periodic reports demonstrating progress against benchmarks and goals.

Costs to State Government:

There is no additional aggregate increase in Medicaid expenditures anticipated as a result of these regulations, as the cost of the temporary rate adjustment will be offset by the overall reduction in Medicaid expenditures due to the closure, merger, acquisition, consolidation, or restructuring.

Costs to Local Government:

Local districts' share of Medicaid costs is statutorily capped; therefore, there will be no additional costs to local governments as a result of this proposed regulation.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this proposed regulation.

Local Government Mandates:

The proposed regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

An eligible provider must submit a written proposal, including a proposed budget. If a temporary rate adjustment is approved for a provider, the provider must submit periodic reports, as determined by the Commissioner, concerning the achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider's approved written proposal.

Duplication:

This is an amendment to an existing State regulation and does not duplicate any existing federal, state or local regulations.

Alternatives:

No significant alternatives are available. Any potential projects that would otherwise qualify for funding pursuant to the revised regulation would, in the absence of this amendment, either not proceed or would require the use of existing provider resources.

Federal Standards:

The proposed regulation does not exceed any minimum standards of the federal government for the same or similar subject area.

Compliance Schedule:

The proposed regulation provides the Commissioner of Health the authority to grant approval of temporary adjustments to rates calculated for residential health care facilities that are subject to or affected by the closure, merger, acquisition, consolidation, or restructuring of a health care facility, for a specified period of time, as determined by the Commissioner, of up to three years.

#### **Regulatory Flexibility Analysis**

Effect of Rule:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be residential health care facilities with 100 or fewer full-time equivalents. Based on recent financial and statistical data extracted from Residential Health Care Facility Cost Reports, approximately 40 residential health care facilities were identified as employing fewer than 100 employees.

No health care providers subject to this regulation will see a Medicaid rate decrease as a result of this regulation.

This rule will have no direct effect on local governments.

Compliance Requirements:

Providers that are granted a temporary rate adjustment must submit periodic reports, as determined by the Commissioner, concerning the

achievement of benchmarks and goals that are established by the Commissioner and are in conformity with the provider's approved written proposal.

The rule will have no direct effect on local governments.

**Professional Services:**

No new or additional professional services are required in order to comply with the proposed amendments.

**Compliance Costs:**

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

**Economic and Technological Feasibility:**

Small businesses will be able to comply with the economic and technological aspects of this rule because there are no technological requirements other than the use of existing technology, and the overall economic aspect of complying with the requirements is expected to be minimal.

**Minimizing Adverse Impact:**

This regulation seeks to provide needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder. In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

**Small Business and Local Government Participation:**

The State filed a Federal Public Notice, published in the State Register, prior to the effective date of the change. The Notice provided a summary of the action to be taken and instructions as to where the public, including small businesses and local governments, could locate copies of the corresponding proposed State Plan Amendment. The Notice further invited the public to review and comment on the related proposed State Plan Amendment. In addition, contact information for the Department of Health was provided for anyone interested in further information.

**Rural Area Flexibility Analysis**

**Effect on Rural Areas:**

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Eric	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

**Compliance Requirements:**

For residential health care facilities that receive the temporary rate adjustment, periodic reports must be submitted concerning the achievement of benchmarks and goals as approved by the Commissioner.

**Professional Services:**

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

**Compliance Costs:**

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

**Minimizing Adverse Impact:**

This regulation provides needed relief to eligible providers, thus a positive impact for small businesses that are eligible and no impact for the remainder.

In addition, local districts' share of Medicaid costs is statutorily capped; therefore, there will be no adverse impact to local governments as a result of this proposal.

**Rural Area Participation:**

A concept paper was shared with the hospital and long-term care industry associations, both of which include members from rural areas. Comments were received and taken into consideration while drafting the regulations. In addition, a Federal Public Notice, published in the New York State Register invited comments and questions from the general public.

**Job Impact Statement**

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulation provides a temporary rate adjustment to eligible residential health care facilities that are subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider in its service delivery area. In addition, the proposed regulation sets forth the conditions under which a provider will be considered eligible, the requirements for requesting a temporary rate adjustment, and the conditions that must be met in order to receive a temporary rate adjustment. The proposed regulation has no implications for job opportunities.

**EMERGENCY  
RULE MAKING**

**Temporary Rate Adjustment (TRA) - Licensed Ambulatory Care Facilities (LACF)**

I.D. No. HLT-14-12-00008-E

Filing No. 449

Filing Date: 2012-05-11

Effective Date: 2012-05-11

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of section 86-8.15 to Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2807(2-a)(e)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** Paragraph (e) of subdivision 2-a of Section 2807 of the Public Health Law (as added by Section 2 of Part C of Chapter 58 of the Laws of 2009) specifically provides the Commissioner of Health with authority to issue emergency regulations in order to compute rates of payment for Article 28 licensed ambulatory care providers as authorized in accordance with the provisions of such subdivision 2-a.

**Subject:** Temporary Rate Adjustment (TRA) - Licensed Ambulatory Care Facilities (LACF).

**Purpose:** Expand TRA to include Article 28 LACFs subject to or affected by closure, merger, acquisition, consolidation, or restructuring.

**Text of emergency rule:** Subpart 86-8 of title 10 of NYCRR is amended by adding a new section 86-8.15, to read as follows:

*86-8.15 Closures, mergers, acquisitions, consolidations, restructurings and inpatient bed de-certifications. (a) The commissioner may grant approval of a temporary adjustment to the non-capital components of rates calculated pursuant to this subpart for eligible ambulatory care facilities licensed under article 28 of the Public Health Law ("PHL").*

*(b) Eligible facilities shall include:*

*(1) facilities undergoing closure;*

*(2) facilities impacted by the closure of other health care facilities;*

*(3) facilities subject to mergers, acquisitions, consolidations or restructuring;*

*(4) facilities impacted by the merger, acquisition, consolidation or restructuring of other health care facilities; or*

*(5) outpatient facilities of general hospitals which have entered into an agreement with the Department to permanently decertify a specified number of staffed hospital inpatient beds, as reported to the Department.*

*(c) Facilities seeking rate adjustments under this section shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:*

*(1) protect or enhance access to care;*

*(2) protect or enhance quality of care;*

**Appendix IV  
2016 Title XIX State Plan  
Fourth Quarter Amendment  
Public Notice**

# MISCELLANEOUS NOTICES/HEARINGS

## Notice of Abandoned Property Received by the State Comptroller

Pursuant to provisions of the Abandoned Property Law and related laws, the Office of the State Comptroller receives unclaimed monies and other property deemed abandoned. A list of the names and last known addresses of the entitled owners of this abandoned property is maintained by the office in accordance with Section 1401 of the Abandoned Property Law. Interested parties may inquire if they appear on the Abandoned Property Listing by contacting the Office of Unclaimed Funds, Monday through Friday from 8:00 a.m. to 4:30 p.m., at:

1-800-221-9311  
or visit our web site at:  
[www.osc.state.ny.us](http://www.osc.state.ny.us)

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

## PUBLIC NOTICE Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for institutional and long term care related to temporary rate adjustments to providers that are undergoing a closure, merger, consolidation, acquisition or restructuring themselves or other health care providers. These payments are authorized by current State statutory and regulatory provisions.

The temporary rate adjustments have been reviewed and approved with aggregate payment amounts totaling up to \$105,500,000, for the period November 1, 2014 through March 31, 2015. The approved providers/provider groups along with their estimated aggregate amounts include:

Provider	Type	2014-15
Critical Access Hospitals (includes Carthage Area Hospital, Inc.; Catskill Regional Medical Center-Hermann; Clifton-Fine Hospital; Community Memorial Hospital, Inc.; Cuba Memorial Hospital, Inc.; Delaware Valley Hospital, Inc.; Elizabethtown Community Hospital; Ellenville Regional Hospital; Gouverneur Hospital; Lewis County General Hospital; Little Falls Hospital; Margaretville Hospital; Moses-Ludington Hospital; O'Connor Hospital; River Hospital; Schuyler Hospital; and Soldiers and Sailors Memorial Hospital of Yates Co.)	Hospitals	\$5,000,000

Severely Financially Distressed Providers	All	\$20,000,000
Mount Sinai Hospital Groups	Hospitals	\$15,000,000
Neurodegenerative Disease Centers for Excellence (includes Terrence Cardinal Cooke Health Care Center; Ferncliff Nursing Home Co., Inc.; Charles T. Sitrin Health Care Center; Victoria Home; and Apex Rehab & Care Center)	Nursing Homes	\$5,000,000
South Nassau Hospital	Hospital	\$3,000,000
Maimonides Medical Center	Hospital	\$2,500,000
CINERGY Collaborative	Nursing Home	\$55,000,000
Total		\$105,500,000

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Years 2014/2015 by provider category, is as follows: institutional, \$25,500,000; long term care, \$60,000,000; and \$20,000,000 for the remainder of Financially Distressed Providers.

The public is invited to review and comment on this proposed State Plan Amendment. Copies of which will be available for public review on the Department's website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status).

Copies of the proposed State Plan Amendments will be on file in each local (county) social services district and available for public review.

For the New York City district, copies will be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

Queens County, Queens Center  
3220 Northern Boulevard  
Long Island City, New York 11101

Kings County, Fulton Center  
114 Willoughby Street  
Brooklyn, New York 11201

Bronx County, Tremont Center  
1916 Monterey Avenue  
Bronx, New York 10457

Richmond County, Richmond Center  
95 Central Avenue, St. George  
Staten Island, New York 10301

For further information and to review and comment, please contact: Department of Health, Bureau of Federal Relations & Provider As-

assessments, 99 Washington Ave. – One Commerce Plaza, Suite 1460, Albany, NY 12210, or e-mail: [spa\\_inquiries@health.state.ny.us](mailto:spa_inquiries@health.state.ny.us)

## PUBLIC NOTICE

Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for institutional services related to temporary rate adjustments to general hospitals that are undergoing a closure, merger, consolidation, acquisition or restructuring of themselves or other health care providers. These payments are currently authorized by current State statutory and regulatory provisions. The following significant and clarifying changes are as follows:

Additional temporary rate adjustments have been reviewed and approved for Mary Imogene Bassett Hospital with aggregate payment amounts totaling up to \$1,563,900 for the period November 1, 2014 through March 31, 2015, \$2,050,438 for the period April 1, 2015 through March 31, 2016, \$1,104,187 for the period April 1, 2016 through March 31, 2017, and \$281,250 for the period April 1, 2017 through March 31, 2018.

The temporary rate adjustment for Arnot Ogden Medical Center, previously noticed on September 10, 2014 and October 8, 2014, is clarified to be approved for (and under the name of) St. Joseph's Hospital (part of Arnot Health) rather than Arnot Ogden Medical, which is a different hospital.

The public is invited to review and comment on this proposed State Plan Amendment. Copies of which will be available for public review on the Department's website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status).

Copies of the proposed State Plan Amendments will be on file in each local (county) social services district and available for public review.

For the New York City district, copies will also be available at the following places:

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New York, New York 10018

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3220 Northern Boulevard  
Long Island City, New York 11101

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1916 Monterey Avenue  
Bronx, New York 10457

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*For further information and to review and comment, please contact:* Department of Health, Bureau of Federal Relations & Provider Assessments, 99 Washington Ave. – One Commerce Plaza, Suite 1460, Albany, NY 12210, or e-mail: [spa\\_inquiries@health.ny.gov](mailto:spa_inquiries@health.ny.gov)

## PUBLIC NOTICE

Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX

(Medicaid) State Plan for non-institutional services to comply with enacted statutory provisions. The following changes are proposed for Medicaid transportation services:

Non-Institutional Services

Effective November 1, 2014, the Commissioner of Health is adding seven Western New York counties to the management of transportation services, which are under State control.

The estimated annual net aggregate in gross Medicaid savings attributable to this initiative for State fiscal year 2014-2015 is \$687,000.

The public is invited to review and comment on this proposed State Plan Amendment. Copies of which will be available for public review on the Department's website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status).

Copies of the proposed State Plan Amendments will be on file in each local (county) social services district and available for public review.

For the New York City district, copies will be available at the following places:

New York County  
250 Church Street  
New York, New York 10018

Queens County, Queens Center  
3220 Northern Boulevard  
Long Island City, New York 11101

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Staten Island, New York 10301

*For further information and to review and comment, please contact:* Department of Health, Bureau of Federal Relations & Provider Assessments, 99 Washington Ave. – One Commerce Plaza, Suite 1460, Albany, NY 12210, or e-mail: [spa\\_inquiries@health.ny.gov](mailto:spa_inquiries@health.ny.gov)

## PUBLIC NOTICE

New York State and Local Retirement System

Pursuant to Retirement and Social Security Law, the New York State and Local Employees' Retirement System hereby gives public notice of the following:

The persons whose names and last known addresses are set forth below appear from records of the above named Retirement System to be entitled to accumulated contributions held by said retirement system whose membership terminated pursuant to Section 613 of the Retirement and Social Security Law on or before September 30, 2013. This notice is published pursuant to Section 109 of the Retirement and Social Security Law of the State of New York. A list of the names contained in this notice is on file and open to public inspection at the office of the New York State and Local Retirement System located at the 110 State St., in the City of Albany, New York. At the expiration of six months from the date of the publication of this notice, the accumulated contributions of the persons so listed shall be deemed abandoned and shall be placed in the pension accumulation fund to be used for the purpose of said fund. Any accumulated contributions so deemed abandoned and transferred to the pension accumulation fund may be claimed by the persons who made such accumulated contributions or, in the event of his death, by his estate or such person as he shall have nominated to receive such accumulated contributions, by

# MISCELLANEOUS NOTICES/HEARINGS

## Notice of Abandoned Property Received by the State Comptroller

Pursuant to provisions of the Abandoned Property Law and related laws, the Office of the State Comptroller receives unclaimed monies and other property deemed abandoned. A list of the names and last known addresses of the entitled owners of this abandoned property is maintained by the office in accordance with Section 1401 of the Abandoned Property Law. Interested parties may inquire if they appear on the Abandoned Property Listing by contacting the Office of Unclaimed Funds, Monday through Friday from 8:00 a.m. to 4:30 p.m., at:

1-800-221-9311  
or visit our web site at:  
[www.osc.state.ny.us](http://www.osc.state.ny.us)

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

## NOTICE OF PUBLIC HEARING

Department of Financial Services

Pursuant to Insurance Law section 2305, the New York State Department of Financial Services hereby gives notice of a public hearing:

Time and Date: 11:00 a.m. on June 28, 2016.

Place: Department of Financial Services, One State Street, 6th Floor Hearing Room, New York, NY 10004

Purpose: The purpose of the public hearing is to determine whether the Superintendent of Financial Services should approve a proposed workers' compensation insurance 2016 loss cost increase of 9.3 percent that was filed with the Department of Financial Services by the New York Compensation Insurance Rating Board, to be effective October 1, 2016, or some other such 2016 loss cost change. If approved, the revised loss costs will be used by workers' compensation insurance companies in setting their rates.

The hearing is open to the public. Interested parties may testify at the hearing or submit written comments to be included in the hearing record. Each speaker will be allowed up to five minutes for oral testimony.

Requests to testify at the hearing should be made in advance. Written comments for the hearing record will be accepted both in advance and for up to five business days after the hearing. Requests to testify and written comments should be submitted to New York State Department of Financial Services, Public Affairs Office - Workers' Compensation Loss Cost 2016 Hearing, One State Street, New York, NY 10004, or e-mailed to [public-hearings@dfs.ny.gov](mailto:public-hearings@dfs.ny.gov) with the subject line "WORKERS COMPENSATION LOSS COST 2016 HEARING."

In accordance with the Americans with Disabilities Act, the Department of Financial Services will provide reasonable accommodations, including interpreter services for the hearing impaired, at no charge to any covered individual wishing to testify at the public hearing,

provided that such request is received at least five business days prior to the hearing date and communicated in writing to: New York State Department of Financial Services, Public Affairs Office - Workers' Compensation Loss Cost 2016 Hearing, One State Street, New York, NY 10004.

For further information, please contact: Department of Financial Services, Public Affairs Office - Workers' Compensation Loss Cost 2016 Hearing, One State St., New York, NY 10004, e-mail: [public-hearings@dfs.ny.gov](mailto:public-hearings@dfs.ny.gov)

## PUBLIC NOTICE Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for long term care services to comply with enacted statutory provisions related to temporary rate adjustments to providers that are undergoing a closure, merger, consolidation, acquisition or restructuring of themselves or other health care providers. These payments are currently authorized by current State statutory and regulatory provisions. The following provides clarification to provisions previously noticed on October 29, 2014:

The temporary rate adjustments have been reviewed and approved with aggregate payment amounts totaling up to \$113,455,264, for the periods November 1, 2014 through March 31, 2018. The approved providers/provider groups along with their estimated aggregate amounts include:

Provider Type: Hospitals; Providers include: Critical Access Hospitals (includes Carthage Area Hospital, Inc.; Catskill Regional Medical Center-Hermann; Clifton-Fine Hospital; Community Memorial Hospital, Inc.; Cuba Memorial Hospital, Inc.; Delaware Valley Hospital, Inc.; Elizabethtown Community Hospital; Ellenville Regional Hospital; Gouverneur Hospital; Lewis County General Hospital; Little Falls Hospital; Margaretville Hospital; Moses-Ludington Hospital; O'Connor Hospital; River Hospital; Schuyler Hospital; and Soldiers and Sailors Memorial Hospital of Yates Co.); Estimated aggregate amounts allocated: 2014/2015: \$5,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: All; Providers include: Severely Financially Distressed Providers; Estimated aggregate amounts allocated: 2014/2015: \$20,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Hospitals; Providers include: Mount Sinai Hospital Groups; Estimated aggregate amounts allocated: 2014/2015: \$15,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Hospital; Providers include: South Nassau Hospital; Estimated aggregate amounts allocated: 2014/2015: \$3,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Hospital; Providers include Maimonides Medical Center; Estimated aggregate amounts allocated: 2014/2015: \$2,500,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Nursing Homes; Providers include Neurodegenerative Disease Centers for Excellence (includes Terrence Cardinal Cooke Health Care Center; Ferncliff Nursing Home Co., Inc.; Charles T. Sitrin Health Care Center; Victoria Home; and Apex Rehab & Care Center); Estimated aggregate amounts allocated totaling up to

\$5,000,000 for SFY 2014/2015; \$0 for SFY 2015/2016; up to \$2,947,020 for SFY 2016/2017; and up to \$710,190 for SFY 2017/2018.

Provider Type: Nursing Homes; Providers include: CINERGY Collaborative; Estimated aggregate amounts allocated: 2014/2015: \$55,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Nursing Homes; Providers include: Blue Line Group (includes Adirondack Tri-County Nursing and Rehabilitation Center, Inc.; Heritage Commons Residential Health Care Facility; Mercy Living Center; and Adirondack Medical Center-Uihlein Living Center); Estimated aggregate amounts totaling up to: \$0 for SFY 2014/2015; \$0 for 2015/2016; and up to \$4,298,054 for SFY 2016/2017.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year (SFY) 2014/2015 is \$105,500,000; for SFY 2015/2016 is \$0; for 2016/2017 is \$7,245,074; and for 2017/2018 is \$710,190.

The public is invited to review and comment on this proposed State Plan Amendment (SPA). Copies of which will be available for public review on the Department's website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status). In addition, approved SPA's beginning in 2011, are also available for viewing on this website.

Copies of the proposed State Plan Amendments will be on file in each local (county) social services district and available for public review.

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Staten Island, New York 10301

*For further information and to review and comment, please contact:*  
Department of Health, Division of Finance and Rate Setting, 99  
Washington Ave., One Commerce Plaza, Suite 1460, Albany, NY  
12210, e-mail: [spa\\_inquiries@health.ny.gov](mailto:spa_inquiries@health.ny.gov)

# MISCELLANEOUS NOTICES/HEARINGS

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1-800-221-9311  
or visit our web site at:  
[www.osc.state.ny.us](http://www.osc.state.ny.us)

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## PUBLIC NOTICE Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for long term care services to comply with enacted statutory provisions related to temporary rate adjustments to providers that are undergoing a closure, merger, consolidation, acquisition or restructuring of themselves or other health care providers. These payments are currently authorized by current State statutory and regulatory provisions. The following provides clarification to provisions previously noticed on October 29, 2014:

The temporary rate adjustments have been reviewed and approved with aggregate payment amounts totaling up to \$113,473,793, for the periods November 1, 2014 through March 31, 2019. The approved providers/provider groups along with their estimated aggregate amounts include:

Provider Type: Hospitals; Providers include: Critical Access Hospitals (includes Carthage Area Hospital, Inc.; Catskill Regional Medical Center-Hermann; Clifton-Fine Hospital; Community Memorial Hospital, Inc.; Cuba Memorial Hospital, Inc.; Delaware Valley Hospital, Inc.; Elizabethtown Community Hospital; Ellenville Regional Hospital; Gouverneur Hospital; Lewis County General Hospital; Little Falls Hospital; Margaretville Hospital; Moses-Ludington Hospital; O'Connor Hospital; River Hospital; Schuyler Hospital; and Soldiers and Sailors Memorial Hospital of Yates Co.); Estimated aggregate amounts allocated: 2014/2015: \$5,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: All; Providers include: Severely Financially Distressed Providers; Estimated aggregate amounts allocated: 2014/2015: \$20,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Hospitals; Providers include: Mount Sinai Hospital Groups; Estimated aggregate amounts allocated: 2014/2015: \$15,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Hospital; Providers include: South Nassau Hospital; Estimated aggregate amounts allocated: 2014/2015: \$3,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Hospital; Providers include Maimonides Medical Center; Estimated aggregate amounts allocated: 2014/2015: \$2,500,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Nursing Homes; Providers include Neurodegenerative Disease Centers for Excellence (includes Terrence Cardinal Cooke Health Care Center; Ferncliff Nursing Home Co., Inc.; Charles T. Sitrin Health Care Center; Victoria Home; and Apex Rehab & Care Center); Estimated aggregate amounts allocated: 2014/2015: \$5,000,000; 2015/2016: \$0; 2016/2017: \$2,902,551; and for 2017/2018: \$473,198; 2018/2019: \$18,529.

Provider Type: Nursing Homes; Providers include: CINERGY Collaborative; Estimated aggregate amounts allocated: 2014/2015: \$55,000,000; 2015/2016: \$0; and 2016/2017: \$0.

Provider Type: Nursing Homes; Providers include: Blue Line Group (includes Adirondack Tri-County Nursing and Rehabilitation Center, Inc.; Heritage Commons Residential Health Care Facility; Mercy Living Center; and Adirondack Medical Center-Uihlein Living Center); Estimated aggregate amounts allocated: 2014/2015: \$0; 2015/2016: \$0; and 2016/2017: \$4,298,054.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year (SFY) 2014/2015 is \$105,500,000; for SFY 2015/2016 is \$0; for 2016/2017 is \$7,200,605; for 2017/2018 is \$473,198; and 2018/2019 is \$18,529.

The public is invited to review and comment on this proposed State Plan Amendment (SPA). Copies of which will be available for public review on the Department's website at [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status). In addition, approved SPA's beginning in 2011, are also available for viewing on this website.

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Bronx, New York 10457  
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Staten Island, New York 10301



*For further information and to review and comment, please contact:*  
Department of Health, Division of Finance and Rate Setting, 99  
Washington Ave., One Commerce Plaza, Suite 1460, Albany, NY  
12210, spa\_inquiries@health.ny.gov

## PUBLIC NOTICE

### New York State and Local Retirement System

Pursuant to Retirement and Social Security Law, the New York State and Local Employees' Retirement System hereby gives public notice of the following:

The persons whose names and last known addresses are set forth below appear from records of the above named Retirement System to be entitled to accumulated contributions held by said retirement system whose membership terminated pursuant to Section 517-a of the Retirement and Social Security Law on or before August 31, 2016. This notice is published pursuant to Section 109 of the Retirement and Social Security Law of the State of New York. A list of the names contained in this notice is on file and open to public inspection at the office of the New York State and Local Retirement System located at the 110 State St, in the City of Albany, New York. At the expiration of six months from the date of the publication of this notice. The accumulated contributions of the persons so listed shall be deemed abandoned and shall be placed in the pension accumulation fund to be used for the purpose of said fund. Any accumulated contributions so deemed abandoned and transferred to the pension accumulation fund may be claimed by the persons who made such accumulated contributions or, in the event of his death, by his estate or such person as he shall have nominated to receive such accumulated contributions, by filing a claim with the State Comptroller in such form and in such a manner as may be prescribed by him, seeking the return of such abandoned contributions. In the event such claim is properly made the State Comptroller shall pay over to the person or persons or estate making the claim such amount of such accumulated contributions without interest.

Da Costa, Henry T - Troy, NY  
Ferry, Jordan E - Fredonia, NY  
Gersitz, John B - Cheektowaga, NY  
Whitehead, Jovan J - Elizabeth, NJ

## PUBLIC NOTICE

### New York State and Local Retirement System

Pursuant to Retirement and Social Security Law, the New York State and Local Employees' Retirement System hereby gives public notice of the following:

The persons whose names and last known addresses are set forth below appear from records of the above named Retirement System to be entitled to accumulated contributions held by said retirement system whose membership terminated pursuant to Section 613 of the Retirement and Social Security Law on or before August 31, 2016. This notice is published pursuant to Section 109 of the Retirement and Social Security Law of the State of New York. A list of the names contained in this notice is on file and open to public inspection at the office of the New York State and Local Retirement System located at the 110 State St., in the City of Albany, New York. At the expiration of six months from the date of the publication of this notice. The accumulated contributions of the persons so listed shall be deemed abandoned and shall be placed in the pension accumulation fund to be used for the purpose of said fund. Any accumulated contributions so deemed abandoned and transferred to the pension accumulation fund may be claimed by the persons who made such accumulated contributions or, in the event of his death, by his estate or such person as he shall have nominated to receive such accumulated contributions, by filing a claim with the State Comptroller in such form and in such a manner as may be prescribed by him, seeking the return of such abandoned contributions. In the event such claim is properly made the State Comptroller shall pay over to the person or persons or estate making the claim such amount of such accumulated contributions without interest.

Agboglo, Tode S - Uniondale, NY  
Ajayi, Eunice M - Sicklerville, NJ  
Akinmade, Omotayo O - Brookhaven, GA  
Allen, Kevin D - Jamaica, NY  
Andriano, Pat F - Deer Park, NY  
Antolos, Mary E - St Augustine, FL  
Archer, Maria R - Buffalo, NY  
Arvelo, Goris - Bronx, NY  
Atoom, Ali M - Buffalo, NY  
Austen, Darrell P - Wilmington, NY  
Babcock, Thomas G - Watervliet, NY  
Baddish, Noa M - Suffern, NY  
Badr, Amel - Hasbrouk Heights, NJ  
Bailey, Kristoffer D - Bay Shore, NY  
Balubayan, Arlene E - Randolph, NJ  
Barclay, Marcia - Rochester, NY  
Barr, Tamika G - Rochester, NY  
Bartle, Roberta E - Oxford, NY  
Bartlett, Casey - Wynantskill, NY  
Basden-Clarke, Latrice - Carrollton, VA  
Batchelor, Joshua D - Fulton, NY  
Bauer, Nicole M - Kingston, NY  
Beauvais, Roseline M - Uniondale, NY  
Becker, Jacklyn R - Norfolk, VA  
Bell, Harry W - Brooklyn, NY  
Bellantoni, Giovanna - Port Chester, NY  
Berg, Anna R - Los Angeles, CA  
Berhaupt, Maclain T - Delmar, NY  
Berkebile, David M - Niagara Falls, NY  
Beuhler, John-David C - Menasha, WI  
Beyer, Gunter J - Yorktown, NY  
Blasso, Lynn - Saratoga Spgs, NY  
Bobkowski, Marissa A - Horseheads, NY  
Borra, Erin P - Plainville, CT  
Boyce, Shawn - West Babylon, NY  
Brace, Bonnie S - Williamsville, NY  
Bradberry, Darcy M - Port Washington, NY  
Brahmbhatt, Yasmin G - Merion Sta, PA  
Braveman, Deanne M - Albany, NY  
Brayer, Novellou S - Marcellus, NY  
Brea, Lucia - Yonkers, NY  
Brennan, Melissa M - Briarcliff, NY  
Breslin, Nicole J - Latham, NY  
Buchel, Robert F - Brooklyn, NY  
Bullock, Erin L - Spring Valley, NY  
Burnley, Richard C - Albany, NY  
Burns, Beverly C - Clinton, NY  
Bush, La Shonda L - Newark, NJ  
Caiati, Kathleen D - Bellport, NY  
Campbell, Eleni - Malverne, NY  
Cardone, Marybeth - Schenectady, NY  
Carmichael, Daniel S - Batavia, NY  
Carone, Denise N - West Babylon, NY  
Carson, Michael J - Otego, NY  
Casseus, Alysha - Spring Valley, NY  
Chan, Steven W - Medford, NY  
Charles, Geneus - Spring Valley, NY  
Chekijian, Michele A - Aquebogue, NY  
Ciarfella, Lena P - Poughkeepsie, NY

**Appendix V**  
**2016 Title XIX State Plan**  
**Fourth Quarter Amendment**  
**Responses to Standard Funding Questions**

**APPENDIX V**  
**LONG TERM CARE SERVICES**  
**State Plan Amendment #16-0050**

**CMS Standard Funding Questions (NIRT Standard Funding Questions)**

The following questions are being asked and should be answered in relation to all payments made to all providers under Attachment 4.19-D of your state plan.

- 1. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by States for services under the approved State plan. Do providers receive and retain the total Medicaid expenditures claimed by the State (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the State, local governmental entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.)**

**Response:** Providers do retain the payments made pursuant to this amendment. However, this requirement in no way prohibits the public provider, including county providers, from reimbursing the sponsoring local government for appropriate expenses incurred by the local government on behalf of the public provider. The State does not regulate the financial relationships that exist between public health care providers and their sponsoring governments, which are extremely varied and complex. Local governments may provide direct and/or indirect monetary subsidies to their public providers to cover on-going unreimbursed operational expenses and assure achievement of their mission as primary safety net providers. Examples of appropriate expenses may include payments to the local government which include reimbursement for debt service paid on a provider's behalf, reimbursement for Medicare Part B premiums paid for a provider's retirees, reimbursement for contractually required health benefit fund payments made on a provider's behalf, and payment for overhead expenses as allocated per federal Office of Management and Budget Circular A-87 regarding Cost Principles for State, Local, and Indian Tribal Governments. The existence of such transfers should in no way negate the legitimacy of these facilities' Medicaid payments or result in reduced Medicaid federal financial participation for the State. This position was further supported by CMS in review and approval of SPA 07-07C when an on-site audit of these transactions for New York City's Health and Hospitals Corporation was completed with satisfactory results.

2. **Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Note that, if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local government entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:**
- (i) **a complete list of the names of entities transferring or certifying funds;**
  - (ii) **the operational nature of the entity (state, county, city, other);**
  - (iii) **the total amounts transferred or certified by each entity;**
  - (iv) **clarify whether the certifying or transferring entity has general taxing authority; and,**
  - (v) **whether the certifying or transferring entity received appropriations (identify level of appropriations).**

**Response:** Payments made to service providers under the provisions of this SPA are funded through a general appropriation received by the State agency that oversees medical assistance (Medicaid), which is the Department of Health.

The source of the appropriation is the Medicaid General Fund Local Assistance Account, which is part of the Global Cap. The Global Cap is funded by General Fund and HCRA resources. There have been no changes to provider taxes and no existing taxes have been modified as a result of this State Plan Amendment.

3. **Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.**

**Response:** These temporary rate adjustments will be an add-on to service payments in the form of supplemental payments. These payments are made in addition to the provider's regular Medicaid payments. The payments are made quarterly and are equal to one-fourth of the total annual amount awarded to the specific provider.

- 4. Please provide a detailed description of the methodology used by the state to estimate the upper payment limit (UPL) for each class of providers (State owned or operated, non-state government owned or operated, and privately owned or operated). Please provide a current (i.e. applicable to the current rate year) UPL demonstration. Under regulations at 42 CFR 4447.272, States are prohibited from setting payment rates for Medicaid inpatient services that exceed a reasonable estimate of the amount that would be paid under Medicare payment principals.**

**Response:** The State is currently working with CMS to finalize the 2015 Nursing Home UPL demonstration which the 2016 demonstration is contingent upon.

**Does any governmental provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?**

**Response:** Effective January 1, 2012, the rate methodology included in the approved State Plan for non-specialty nursing facility services for the operating component of the rate is a blended statewide/peer group price adjusted for case mix and wage differentials (WEF). Specialty nursing facility and units are paid the operating rate in effect on January 1, 2009. The capital component of the rate for all specialty and non-specialty facilities is based upon a cost based methodology. We are unaware of any requirement under current federal law or regulation that limits individual provider payments to their actual costs.

#### **ACA Assurances:**

- 1. Maintenance of Effort (MOE). Under section 1902(gg) of the Social Security Act (the Act), as amended by the Affordable Care Act, as a condition of receiving any Federal payments under the Medicaid program during the MOE period indicated below, the State shall not have in effect any eligibility standards, methodologies, or procedures in its Medicaid program which are more restrictive than such eligibility provisions as in effect in its Medicaid program on March 10, 2010.**

#### **MOE Period.**

- **Begins on: March 10, 2010, and**

- **Ends on:** The date the Secretary of the Federal Department of Health and Human Services determines an Exchange established by a State under the provisions of section 1311 of the Affordable Care Act is fully operational.

**Response:** This SPA complies with the conditions of the MOE provision of section 1902(gg) of the Act for continued funding under the Medicaid program.

2. **Section 1905(y) and (z) of the Act provides for increased FMAPs for expenditures made on or after January 1, 2014 for individuals determined eligible under section 1902(a)(10)(A)(i)(VIII) of the Act. Under section 1905(cc) of the Act, the increased FMAP under sections 1905(y) and (z) would not be available for States that require local political subdivisions to contribute amounts toward the non-Federal share of the State's expenditures at a greater percentage than would have been required on December 31, 2009.**

**Prior to January 1, 2014 States may potentially require contributions by local political subdivisions toward the non-Federal share of the States' expenditures at percentages greater than were required on December 31, 2009. However, because of the provisions of section 1905(cc) of the Act, it is important to determine and document/flag any SPAs/State plans which have such greater percentages prior to the January 1, 2014 date in order to anticipate potential violations and/or appropriate corrective actions by the States and the Federal government.**

**Response:** This SPA would [ ] / would not [✓] violate these provisions, if they remained in effect on or after January 1, 2014.

3. **Please indicate whether the State is currently in conformance with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.**

**Response:** The State does comply with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.

#### **Tribal Assurance:**

**Section 1902(a)(73) of the Social Security Act the Act requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular ongoing basis from designees of Indian health programs whether operated by the Indian Health Service HIS Tribes or Tribal organizations under the Indian Self Determination and Education Assistance Act ISDEAA or Urban Indian Organizations under the Indian Health Care Improvement Act.**

**IHCIA Section 2107(e)(I) of the Act was also amended to apply these requirements to the Children's Health Insurance Program CHIP. Consultation is required concerning Medicaid and CHIP matters having a direct impact on Indian health programs and Urban Indian organizations.**

- a) Please describe the process the State uses to seek advice on a regular ongoing basis from federally recognized tribes Indian Health Programs and Urban Indian Organizations on matters related to Medicaid and CHIP programs and for consultation on State Plan Amendments waiver proposals waiver extensions waiver amendments waiver renewals and proposals for demonstration projects prior to submission to CMS.**
- b) Please include information about the frequency inclusiveness and process for seeking such advice.**
- c) Please describe the consultation process that occurred specifically for the development and submission of this State Plan Amendment when it occurred and who was involved.**

**Response:** Tribal consultation was performed in accordance with the State's tribal consultation policy as approved in SPA 11-06, and documentation of such is included with the original submission. To date, no feedback has been received from any tribal representative in response to the proposed change in this SPA.