NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

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

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

December 30, 2016

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

RE: SPA #16-0051
Long Term Care Facility Services

Dear Mr. Cooley:

The State requests approval of the enclosed amendment #16-0051 to the Title XIX (Medicaid) State Plan for long term care facility services to be effective December 1, 2016 (Appendix I). This amendment is being submitted based on enacted legislation. 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 State statute 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 26, 2016 is also enclosed for your information (Appendix IV). In addition responses to the five standard funding questions and standard access questions are also enclosed (Appendix V and VII, respectively).

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. Helgerson
Medicaid Director
Office of Health Insurance Programs

Enclosures
cc: Mr. Michael Melendez
Mr. Tom Brady

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: **16-0051**	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 **December 1, 2016**	

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: **§ 1902(a) of the Social Security Act, and 42 CFR § 447**	7. FEDERAL BUDGET IMPACT: **(in thousands)** **a. FFY 12/01/16-09/30/17 $ 416.67** **b. FFY 10/01/17-09/30/18 $ 416.67**
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: **Attachment 4.19-D Part I: Page 110(d)(29.1)**	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: **Attachment 4.19-D Part I: Page 110(d)(29.1)**

10. SUBJECT OF AMENDMENT:
Restorative Care in a Nursing Home
(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:	16. RETURN TO: **New York State Department of Health** **Bureau of Federal Relations & Provider Assessments** **99 Washington Ave – One Commerce Plaza** **Suite 1432** **Albany, NY 12210**
13. TYPED NAME: **Jason A. Helgerson**	
14. TITLE: **Medicaid Director** **Department of Health**	
15. DATE SUBMITTED: December 30, 2016	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:	18. DATE APPROVED:
PLAN APPROVED – ONE COPY ATTACHED	
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
110(d)(29.1)

Nursing Home Advanced Training Incentive Payments (cont'd)

Excluded Facilities are:

- Hospital based nursing facilities; and
- Nursing Facilities that have been approved to receive Vital Access Provider (VAP) payments during the same state fiscal year the incentive payment is available.

Calculation Statewide Median and Staff Retention Percentage: Data from Schedule P (Staff Turnover) of the most recently filed Cost Report will be used to measure staff turnover and retention rates for direct care staff. For the 2016 payment, the State will use the 2014 cost report. For the 2017 payment, the state will use 2015 cost report. The staff retention percentage will be equal to the number of employees retained as of December 31, who were employed on January 1 of the same year by the number of staff as of January 1 of that year.

(# of Employees Retained as of December 31, 20XX, who were Employed on January 1, 20XX)
= Staff Retention %
divided by (# of Staff as of January 1, 20XX)

XX = 2014 or 2015 cost report as applicable.

A statewide staff retention median was derived by sorting the provider percentages from high to low and selecting the percentage in the middle of the range.

Restorative (Intensive) Care in a Nursing Home Demonstration

Effective December 1, 2016 NYSDOH will implement a Restorative Care Unit Demonstration Program to reduce hospital admissions and readmissions from residential health care facilities through the establishment of restorative units. These restorative care units will provide higher-intensity treatment services to residents who are at risk of hospitalization upon an acute change in condition and seek to improve the capacity of nursing facilities to identify and treat higher acuity patients with multiple co-morbidities as effectively as possible in place, rather than through admission to an acute care facility. The eligible applicant for this program is Golden Hill Nursing and Rehabilitation Center (which has developed a unique delivery model over the past 2 years in a free standing skilled nursing facility, with a license in good standing with NYS DOH and owner/operators who are in good standing by meeting all character and competence requirements.

Appendix II
2016 Title XIX State Plan
Fourth Quarter Amendment
Summary

SUMMARY
SPA #16-0051

This State Plan Amendment proposes to implement a Restorative Care Unit Demonstration Program to reduce hospital admissions and readmissions from residential health care facilities through the establishment of restorative units. These Restorative care units will provide higher-intensity treatment services for residents who are at risk of hospitalization upon an acute change in condition and seek to improve the capacity of nursing facilities to identify and treat higher acuity patients with multiple co-morbidities as effectively as possible in place, rather than through admission to an acute care facility.

CMS research on Medicare-Medicaid enrollees in nursing facilities found that approximately 45% of hospital admissions among individuals receiving Medicare skilled nursing facility services or Medicaid nursing facility services could have been avoided. The goal of this pilot program is to reduce hospital admissions generated by SNFs by 50% during the initial three year period. The proposed budget for the program is $5 million over the initial three years to cover startup capital and operational costs, with the ability to expand the program if goals have been met at the end of the pilot period. Budget allocation would be 60% staffing and related education, 30% infrastructure/equipment, 10% program administration, management and analysis.

The eligible applicant for this program is Restorative Continuum, LLC which has developed a unique delivery model over the past 2 years in a freestanding skilled nursing facility, with a license in good standing with NYS DOH and owner/operators who are in good standing by meeting all character and competence requirements. Golden Hill Nursing and Rehabilitation Center will be required to utilize evidence based tools, as well as a critical indicator monitoring system to evaluate performance indicators; patient-focused education to support advanced care planning and palliative care decisions; and protocols to effect care monitoring practices designed to reduce the likelihood of change in patient status conditions that may require acute care evaluation.

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

Authorizing Provisions
SPA 16-0051

Chapter 59 of the Laws of 2016 - Part B:

§ 24. Restorative care unit demonstration program. 1. Notwithstanding any law, rule or regulation to the contrary, the commissioner of health, within amounts appropriated, shall implement a restorative care unit demonstration program within one year of the effective date of this section to reduce hospital admissions and readmissions from residential health care facilities established pursuant to article 28 of the public health law, through the establishment of restorative care units. Such units shall provide higher-intensity treatment services for residents who are at risk of hospitalization upon an acute change in condition, and seek to improve the capacity of nursing facilities to identify and treat higher acuity patients with multiple co-morbidities as effectively as possible in-situ, rather than through admission to an acute care facility. The unit shall utilize evidence based tools, as well as: (a) a critical indicator monitoring system to evaluate performance indicators; (b) patient-focused education to support advanced care planning and palliative care decisions; and (c) protocols to effect care monitoring practices designed to reduce the likelihood of change in patient status conditions that may require acute care evaluation. A residential health care facility, established pursuant to article 28 of the public health law, wishing to establish restorative care units must contract with an eligible applicant.

2. For the purposes of this section, an eligible applicant must at a minimum meet the following criteria: (a) be a New York state entity in good standing; and (b) have demonstrated experience and capacity in developing and implementing a similar unit as described herein. An eligible applicant for this demonstration program shall contract with a residential health care facility, established pursuant to article 28 of the public health law, with a license in good standing that: (i) employs a nursing home administrator with at least two years operational experience; (ii) has a minimum of 160 certified beds; (iii) accepts reimbursement pursuant to title XVIII and title XIX of the federal social security act; (iv) has achieved at least a three star overall nursing home compare rating from the Center for Medicare and Medicaid Services five-star quality rating system; and (v) operates a discreet dedicated restorative care unit with a minimum of 18 beds. Additionally, the contracting facility must have at the time of application, and maintain during the course of the demonstration, functional wireless internet connectivity throughout the facility, including backup, with sufficient bandwidth to support technological monitoring.

3. Restorative care units; requirements. Restorative care units shall provide on-site healthcare services, including, but not limited to: (a) radiology; (b) peripherally inserted central catheter insertion; (c) blood sugar, hemoglobin/hematocrit, electrolytes and blood gases monitoring; (d) 12-lead transmissible electrocardiograms; (e) specialized cardiac services, including rapid response teams, crash carts, and defibrillators; (f) telemedicine and telemetry which shall have the capability to notify the user, in real time, when an urgent or emergent physiological change has occurred in a patient's condition requiring intervention, and to generate reports that can be accessed by any provider, in real time, in any location to allow for immediate clinical intervention.

4. Electronic health records. For the duration of the demonstration, the restorative care unit shall utilize and maintain an electronic health record system that connects to the local regional health information organization to facilitate the exchange of health information.

5. The department of health shall monitor the quality and effectiveness of the demonstration program in reducing hospital admissions and readmissions over a three year period and shall report to the legislature, within one year of implementation, on the demonstration program's effectiveness in providing a higher level of care at lower cost, and include recommendations regarding the utilization of the restorative care unit model in the state.

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

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 Environmental Conservation

Pursuant to Title 3, Article 49 of the Environmental Conservation Law, the Department of Environmental Conservation hereby gives public notice of the following:

Notice is hereby given, pursuant to Section 49-0305(9) of the Environmental Conservation Law, of the Department's intent to acquire a Conservation Easement from Open Space Institute over certain lands located in the Towns of Dannemora, Saranac and Black Brook, Clinton County, New York.

For further information contact: Robert A. Burgher, Superintendent, Bureau of Real Property, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4256, (518) 402-9442

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. The following changes are proposed:

Long Term Care Services

Effective on or after December 1, 2016, the Commissioner of Health shall implement a restorative care unit demonstration program with the goal of developing a program through which hospital admission from nursing homes can be decreased. The program could provide benefit to the over 100,000 residents of New York State nursing homes.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2016/2017 is $5,000,000. The fiscal impact of this demonstration to the Medicaid program would be spread over three years as the program is developed and implemented on a limited basis.

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

Copies of the proposed State Plan Amendment 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, Division of Finance and Rate Setting, 99 Washington Ave., One Commerce Plaza, Suite 1460, Albany, NY 12210, spa_inquiries@health.ny.gov

PUBLIC NOTICE
Department of State
F-2016-0635
Date of Issuance – October 26, 2016

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program. The applicant's consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

In F-2016-0635, Village of Amityville, is proposing to construct a new 55 linear foot vinyl bulkhead to connect to an existing adjoining bulkhead. The bulkhead height will be at an elevation of 4.9 feet (ten

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

APPENDIX V
LONG TERM CARE SERVICES
State Plan Amendment #16-0051

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 budget 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 new provider taxes and no existing taxes have been modified.

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: The payments authorized for this provision are supplemental or payments to encourage the demonstration program.

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 447.272, 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. The State will submit the 2016 nursing home UPL demonstration as soon as practicable.

5. **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, 2015.

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: This 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 11-0006, 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.