



June 29, 2023

Todd McMillion
Director
Department of Health and Human Services
Centers for Medicare and Medicaid Services
233 North Michigan Ave, Suite 600
Chicago, IL 60601

RE: SPA #23-0053
Long Term Care Facility Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #23-0053 to the Title XIX (Medicaid) State Plan for long term care facility services to be effective April 1, 2023 (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 enacted legislation is enclosed for your information (Appendix III). Copies of the public notice of this proposed amendment, which were given in the New York State Register on March 29, 2023, and clarified on July 12, 2023, are 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 State Plan Amendment submission, please do not hesitate to contact Regina Deyette, Medicaid State Plan Coordinator, Division of Finance and Rate Setting, Office of Health Insurance Programs at (518) 473-3658.

Sincerely,

Amir Bassiri
Medicaid Director
Office of Health Insurance Programs

Enclosures

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

1. TRANSMITTAL NUMBER ____ _	2. STATE ____
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3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT XIX XXI
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TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

5. FEDERAL STATUTE/REGULATION CITATION
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6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY _____ \$ _____
b. FFY _____ \$ _____

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

9. SUBJECT OF AMENDMENT

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

11. SIGNATURE OF STATE AGENCY OFFICIAL 
12. TYPED NAME
13. TITLE
14. DATE SUBMITTED June 29, 2023

15. RETURN TO

FOR CMS USE ONLY	
16. DATE RECEIVED	17. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED	
18. EFFECTIVE DATE OF APPROVED MATERIAL	19. SIGNATURE OF APPROVING OFFICIAL
20. TYPED NAME OF APPROVING OFFICIAL	21. TITLE OF APPROVING OFFICIAL

22. REMARKS

Appendix I
2023 Title XIX State Plan
Second Quarter Amendment
Amended SPA Pages

Appendix II
2023 Title XIX State Plan
Second Quarter Amendment
Summary

SUMMARY
SPA #23-0053

This State Plan Amendment proposes to revise the State Plan for an across-the-board adjustment of a 4.0% Cost of Living Adjustment (COLA) to the following institutional service, Intermediate Care Facility (ICF/IID).

Appendix III
2023 Title XIX State Plan
Second Quarter Amendment
Authorizing Provisions

Part DD of Chapter 57 of the Laws of 2023

PART DD

3 Section 1. 1. Subject to available appropriations and approval of the
4 director of the budget, the commissioners of the office of mental
5 health, office for people with developmental disabilities, office of
6 addiction services and supports, office of temporary and disability
7 assistance, office of children and family services, and the state office
8 for the aging shall establish a state fiscal year 2023-24 cost of living
9 adjustment (COLA), effective April 1, 2023, for projecting for the
10 effects of inflation upon rates of payments, contracts, or any other
11 form of reimbursement for the programs and services listed in paragraphs
12 (i), (ii), (iii), (iv), (v), and (vi) of subdivision four of this
13 section. The COLA established herein shall be applied to the appropri-
14 ate portion of reimbursable costs or contract amounts. Where appropri-
15 ate, transfers to the department of health (DOH) shall be made as
16 reimbursement for the state share of medical assistance.

17 2. Notwithstanding any inconsistent provision of law, subject to the
18 approval of the director of the budget and available appropriations
19 therefore, for the period of April 1, 2023 through March 31, 2024, the
20 commissioners shall provide funding to support a four percent (4.0%)
21 cost of living adjustment under this section for all eligible programs
22 and services as determined pursuant to subdivision four of this section.

23 3. Notwithstanding any inconsistent provision of law, and as approved
24 by the director of the budget, the 4.0 percent cost of living adjustment
25 (COLA) established herein shall be inclusive of all other cost of living
26 type increases, inflation factors, or trend factors that are newly
27 applied effective April 1, 2023. Except for the 4.0 percent cost of
28 living adjustment (COLA) established herein, for the period commencing
29 on April 1, 2023 and ending March 31, 2024 the commissioners shall not
30 apply any other new cost of living adjustments for the purpose of estab-
31 lishing rates of payments, contracts or any other form of reimbursement.
32 The phrase "all other cost of living type increases, inflation factors,
33 or trend factors" as defined in this subdivision shall not include
34 payments made pursuant to the American Rescue Plan Act or other federal
35 relief programs related to the Coronavirus Disease 2019 (COVID-19)
36 pandemic Public Health Emergency. This subdivision shall not prevent
37 the office of children and family services from applying additional
38 trend factors or staff retention factors to eligible programs and
39 services under paragraph (v) of subdivision four of this section.

40 4. Eligible programs and services. (i) Programs and services funded,
41 licensed, or certified by the office of mental health (OMH) eligible for
42 the cost of living adjustment established herein, pending federal
43 approval where applicable, include: office of mental health licensed
44 outpatient programs, pursuant to parts 587 and 599 of title 14 CRR-NY of
45 the office of mental health regulations including clinic, continuing day
46 treatment, day treatment, intensive outpatient programs and partial
47 hospitalization; outreach; crisis residence; crisis stabilization,
48 crisis/respite beds; mobile crisis, part 590 comprehensive psychiatric
49 emergency program services; crisis intervention; home based crisis
50 intervention; family care; supported single room occupancy; supported
51 housing; supported housing community services; treatment congregate;
52 supported congregate; community residence - children and youth;
53 treatment/apartment; supported apartment; community residence single
S. 4007--C 150 A. 3007--C

1 room occupancy; on-site rehabilitation; employment programs; recreation;
2 respite care; transportation; psychosocial club; assertive community
3 treatment; case management; care coordination, including health home
4 plus services; local government unit administration; monitoring and

5 evaluation; children and youth vocational services; single point of
6 access; school-based mental health program; family support children and
7 youth; advocacy/support services; drop in centers; recovery centers;
8 transition management services; bridger; home and community based waiver
9 services; behavioral health waiver services authorized pursuant to the
10 section 1115 MRT waiver; self-help programs; consumer service dollars;
11 conference of local mental hygiene directors; multicultural initiative;
12 ongoing integrated supported employment services; supported education;
13 mentally ill/chemical abuse (MICA) network; personalized recovery
14 oriented services; children and family treatment and support services;
15 residential treatment facilities operating pursuant to part 584 of title
16 14-NYCRR; geriatric demonstration programs; community-based mental
17 health family treatment and support; coordinated children's service
18 initiative; homeless services; and promises zone.

19 (ii) Programs and services funded, licensed, or certified by the
20 office for people with developmental disabilities (OPWDD) eligible for
21 the cost of living adjustment established herein, pending federal
22 approval where applicable, include: local/unified services; chapter 620
23 services; voluntary operated community residential services; article 16
24 clinics; day treatment services; family support services; 100% day
25 training; epilepsy services; traumatic brain injury services; hepatitis
26 B services; independent practitioner services for individuals with
27 intellectual and/or developmental disabilities; crisis services for
28 individuals with intellectual and/or developmental disabilities; family
29 care residential habilitation; supervised residential habilitation;
30 supportive residential habilitation; respite; day habilitation; prevoca-
31 tional services; supported employment; community habilitation; interme-
32 diate care facility day and residential services; specialty hospital;
33 pathways to employment; intensive behavioral services; basic home and
34 community based services (HCBS) plan support; health home services
35 provided by care coordination organizations; community transition
36 services; family education and training; fiscal intermediary; support
37 broker; and personal resource accounts.

38 (iii) Programs and services funded, licensed, or certified by the
39 office of addiction services and supports (OASAS) eligible for the cost
40 of living adjustment established herein, pending federal approval where
41 applicable, include: medically supervised withdrawal services - residen-
42 tial; medically supervised withdrawal services - outpatient; medically
43 managed detoxification; medically monitored withdrawal; inpatient reha-
44 bilitation services; outpatient opioid treatment; residential opioid
45 treatment; KEEP units outpatient; residential opioid treatment to absti-
46 nence; problem gambling treatment; medically supervised outpatient;
47 outpatient rehabilitation; specialized services substance abuse
48 programs; home and community based waiver services pursuant to subdivi-
49 sion 9 of section 366 of the social services law; children and family
50 treatment and support services; continuum of care rental assistance case
51 management; NY/NY III post-treatment housing; NY/NY III housing for
52 persons at risk for homelessness; permanent supported housing; youth
53 clubhouse; recovery community centers; recovery community organizing
54 initiative; residential rehabilitation services for youth (RRSY); inten-
55 sive residential; community residential; supportive living; residential
56 services; job placement initiative; case management; family support
S. 4007--C 151 A. 3007--C

1 navigator; local government unit administration; peer engagement; voca-
2 tional rehabilitation; support services; HIV early intervention
3 services; dual diagnosis coordinator; problem gambling resource centers;
4 problem gambling prevention; prevention resource centers; primary
5 prevention services; other prevention services; and community services.

6 (iv) Programs and services funded, licensed, or certified by the
7 office of temporary and disability assistance (OTDA) eligible for the
8 cost of living adjustment established herein, pending federal approval
9 where applicable, include: nutrition outreach and education program

10 (NOEP).

11 (v) Programs and services funded, licensed, or certified by the office
12 of children and family services (OCFS) eligible for the cost of living
13 adjustment established herein, pending federal approval where applica-
14 ble, include: programs for which the office of children and family
15 services establishes maximum state aid rates pursuant to section 398-a
16 of the social services law and section 4003 of the education law; emer-
17 gency foster homes; foster family boarding homes and therapeutic foster
18 homes; supervised settings as defined by subdivision twenty-two of
19 section 371 of the social services law; adoptive parents receiving
20 adoption subsidy pursuant to section 453 of the social services law; and
21 congregate and scattered supportive housing programs and supportive
22 services provided under the NY/NY III supportive housing agreement to
23 young adults leaving or having recently left foster care.

24 (vi) Programs and services funded, licensed, or certified by the state
25 office for the aging (SOFA) eligible for the cost of living adjustment
26 established herein, pending federal approval where applicable, include:
27 community services for the elderly; expanded in-home services for the
28 elderly; and supplemental nutrition assistance program.

29 5. Each local government unit or direct contract provider receiving
30 funding for the cost of living adjustment established herein shall
31 submit a written certification, in such form and at such time as each
32 commissioner shall prescribe, attesting how such funding will be or was
33 used to first promote the recruitment and retention of non-executive
34 direct care staff, non-executive direct support professionals, non-exe-
35 cutive clinical staff, or respond to other critical non-personal service
36 costs prior to supporting any salary increases or other compensation for
37 executive level job titles.

38 6. Notwithstanding any inconsistent provision of law to the contrary,
39 agency commissioners shall be authorized to recoup funding from a local
40 governmental unit or direct contract provider for the cost of living
41 adjustment established herein determined to have been used in a manner
42 inconsistent with the appropriation, or any other provision of this
43 section. Such agency commissioners shall be authorized to employ any
44 legal mechanism to recoup such funds, including an offset of other funds
45 that are owed to such local governmental unit or direct contract provid-
46 er.

47 § 2. This act shall take effect immediately and shall be deemed to
48 have been in full force and effect on and after April 1, 2023.

Appendix IV
2023 Title XIX State Plan
Second 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 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, non-institutional and long-term care services to comply with statutory provisions. The following changes are proposed:

All Services

Effective on or after April 1, 2023, the Department of Health will adjust rates statewide to reflect a 2.5% percent Cost of Living Adjustment for the following Office of Mental Health (OMH), Office of Addiction Services and Supports (OASAS), and Office for People With Developmental Disabilities (OPWDD) State Plan Services: OMH Outpatient Services, OMH Clinic Services, OMH Rehabilitative Services, Children Family Treatment Support Services, Health Home Plus, Psychiatric Residential Treatment Facilities for Children and Youth, OASAS Outpatient Addiction Services, OASAS Freestanding (non-hospital) Inpatient Rehabilitation Services, OASAS Freestanding Inpatient Detox Services, OASAS Addiction Treatment Centers, OASAS Part 820 Residential Services, OASAS Residential Rehabilitation Services for Youth, Intermediate Care Facility (ICF/IDD), Day Treatment, Article 16 Clinic Services, Specialty Hospital, Health Home Services Provided by Care Coordination Organizations, Independent Practitioner Services for Individual with Developmental Disabilities (IPSIDD), and OPWDD Crisis Services.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$53.6 million.

Non-Institutional Services

Effective on and after April 1, 2023, the New York State Department of Health proposes to amend the State Plan to allow for reimbursement of Medicaid covered services provided by pharmacists within their lawful scope of practice, including pharmacist prescribing oral contraceptives and smoking cessation products.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$1.6 million. In the out years the net aggregate in gross Medicaid expenditure for smoking cessation products will be a savings.

Effective on or after April 1, 2024, this proposal would eliminate Prescriber Prevails which applies to the Medicaid fee-for-service pharmacy program. Doing so would reduce inappropriate prescribing, remove barriers that limit the State's ability to manage pharmacy programs, and minimize the inappropriate influence of pharmaceutical manufacturers in the prior authorization process.

The estimated net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2024-2025 is (\$99 million).

Effective on or after April 1, 2023, the Department will remove copayments for over the counter (OTC) products and limit OTC products to those that are medically necessary. Clinically critical products such as aspirin and vitamins and minerals used for deficiencies will continue to be covered, as will less expensive OTC products that are in Preferred Drug Program (PDP) drug classes.

The estimated net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is (\$17.4 million).

Effective on and after April 1, 2023, the New York State Department of Health proposes to amend the State Plan to modify the specific drug class language for excluded drugs, to alternatively use current publicly available Department resources for coverage transparency.

There is no estimated change to annual gross Medicaid expenditures as a result of this proposed amendment.

Effective on or after April 1, 2023, this proposal continues the supplemental upper payment limit payments made to general hospitals, other than major public general hospitals under non-institutional services of \$339 million annually.

There is no estimated change to gross Medicaid expenditures as a result of this proposed amendment.

For state fiscal year beginning April 1, 2023, through March 31, 2024, this proposal continues hospital outpatient payment adjustments that increase the operating cost components of rates of payment for hospital outpatient and emergency departments on and after April 1, 2011, for public general hospitals other than those operated by the State of New York or the State University of New York, which are located in a city with a population of over one million. The amount to be paid will be up to \$287 million annually based on criteria and methodology set by the Commissioner of Health, which the Commissioner may periodically set through a memorandum of understanding with the New York City Health and Hospitals Corporation. Such adjustments shall be paid by means of one or more estimated payments. Payments may be added to rates of payment or made as aggregate payments.

There is no estimated change to gross Medicaid expenditures as a result of this proposed amendment.

For state fiscal year beginning April 1, 2023, through March 31, 2024, this proposal continues payment of up to \$5.4 million in additional annual Medicaid payments to county operated free-standing clinics, not including facilities operated by the New York City Health

and Hospitals Corporation, for services provided by such DTC and those provided by a county operated freestanding mental health or substance abuse DTC. Distributions shall be based on each eligible facility's proportionate share of the sum of all DTC and clinic visits for all eligible facilities receiving payments for the base year two years prior to the rate year. The proportionate share payments may be added to rates of payment or made as aggregate payments to eligible facilities.

There is no estimated change to gross Medicaid expenditures as a result of this proposed amendment.

Effective April 1, 2023, and each state fiscal year thereafter, this amendment proposes to revise the calculation to extract data later on in the calendar year for the applicable dates of service. The current authority to make supplemental payments for services provided by physicians, nurse practitioners and physician assistants will continue.

There is no estimated change to gross Medicaid expenditures as a result of this proposed amendment.

Effective on or after April 1, 2023, the Department of Health will adjust rates for Assisted Living Program (ALP) providers by a 5% across the board increase to the most recently active Operating rate in effect on March 31, 2023, for each provider.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$18 million.

Effective on or after April 1, 2023, the Department of Health will adjust rates for Adult Day Health Care providers by a 5% across the board increase to the most recently active Operating rate in effect on March 31, 2023, for each provider.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$838,000.

Effective on and after April 1, 2023, this notice provides for a temporary rate adjustment with an aggregate payment totaling no less than \$7.5 million annually for Critical Access Hospitals (CAHs), for the periods April 1, 2023, through March 31, 2024, and April 1, 2024, through March 31, 2025. Funding will be allocated to financially distressed hospitals with plans to reconfigure operations by improving financial management, improving quality of care and service delivery and/or improving operational efficiency and cost effectiveness.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$7.5 million and contained in the budget for state fiscal year 2024-2025 is \$7.5 million.

Effective on and after April 1, 2023, this notice provides for a temporary rate adjustment with an aggregate payment amount totaling no less than \$10 million annually, for Essential Community Providers (ECPs) for the periods April 1, 2023, through March 31, 2024, and April 1, 2024, through March 31, 2025. Funding will be allocated to financially distressed hospitals with plans to reconfigure operations by improving financial management, improving quality of care and service delivery and/or improving operational efficiency and cost effectiveness.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$10 million and contained in the budget for state fiscal year 2024-2025 \$10 million.

Effective on or after April 1, 2023, this notice proposes to establish Medical Assistance coverage and rates of payment for rehabilitative services for individuals residing in OMH-licensed residential settings who have been diagnosed with an eating disorder, in order to provide appropriate care and treatment to adults and children with eating disorders.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$4 million.

Effective on or after May 1, 2023, the NYS Medicaid Program proposes to reimburse enrolled ambulance services for administration of vaccinations performed by Emergency Medical Technicians (EMT) / Paramedics employed by the ambulance service. This proposal is

intended to ensure ongoing access to vaccinations after the end of the federal COVID-19 Public Health Emergency.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-24 is \$35,000.

Effective March 11, 2021 and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B) of the Social Security Act, the Medicaid program assures coverage of COVID-19 vaccines and administration of the vaccines, COVID-19 treatment, including specialized equipment and therapies (including preventive therapies), and COVID-19 testing consistent with the Centers for Disease Control and Prevention (CDC) recommendations.

There is no estimated change to annual gross Medicaid expenditures as a result of this proposed amendment.

Effective December 1, 2021 and ending on the last day of the first calendar quarter that begins one year after the last day of the emergency period described in section 1135(g)(1)(B) of the Social Security Act, the Medicaid program proposes to reimburse providers for medically necessary COVID-19 vaccine counseling for children under 21 at a fee of \$25.00 per session.

There is no estimated change to annual gross Medicaid expenditures as a result of this proposed amendment.

Effective on or after April 1, 2023, the Department of Health will adjust rates statewide to reflect up to a twenty-five percent rate increase for all services provided by School-based Mental Health Outpatient Treatment and Rehabilitative Service (SBMH MHOTRS) programs licensed by the Office of Mental Health.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$9.2 million.

Effective on or after April 1, 2023, Medicaid will increase the APG Base Rates by ten percent for School Based Health Centers (SBHC).

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$2.8 million.

Effective on or after April 1, 2023, a Supplemental Payment Program will be established to reimburse eligible Federally Qualified Health Centers (FQHCs), Rural Health Clinics (RHCs) and Diagnostic and Treatment Centers (DTCs) for potential loss of funding associated with the 340B Drug Pricing Program due to State policy change. Additionally, this Amendment clarifies the reimbursement methodology for the Supplemental Payment Wrap Program for FQHCs and RHCs which provides supplemental payments that are equal to 100% of the difference between the facility's reasonable cost per visit rate and the amount per visit reimbursed by the Medicaid managed care health plan.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$250 million.

Institutional Services

Effective on or after April 1, 2023, this proposal continues the supplemental upper payment limit payments made to general hospitals, other than major public general hospitals under institutional services of \$339 million annually.

There is no estimated change to gross Medicaid expenditures as a result of this proposed amendment.

For state fiscal year beginning April 1, 2023 through March 31, 2024, this proposal continues adjustments for hospital inpatient services provided on and after April 1, 2012, to public general hospitals, other than those operated by the State of New York or the State University of New York, located in a city with a population of over one million and receiving reimbursement of up to \$1.08 billion annually based on criteria and methodology set by the Commissioner of Health, which the Commissioner may periodically set through a memorandum of understanding with the New York City Health and Hospitals Corporation. Such adjustments will be paid by means of one or more estimated payments. Payments to eligible public general hospitals may be added to rates of payment or made as aggregate payments.

Public Notice **NYS 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, non-institutional and long-term care services to comply with statutory provisions. The following clarifications are proposed:

All Services

The following is a clarification to the March 29, 2023, noticed provision to adjust rates statewide to reflect a 2.5% Cost of Living Adjustment for the following Office of Mental Health (OMH), Office of Addiction Services and Supports (OASAS), and Office for People With Developmental Disabilities (OPWDD) State Plan Services: OMH Outpatient Services, OMH Clinic Services, OMH Rehabilitative Services, Children Family Treatment Support Services, Health Home Plus, Psychiatric Residential Treatment Facilities for Children and Youth, OASAS Outpatient Addiction Services, OASAS Freestanding (non-hospital) Inpatient Rehabilitation Services, OASAS Freestanding Inpatient Detox Services, OASAS Addiction Treatment Centers, OASAS Part 820 Residential Services, OASAS Residential Rehabilitation Services for Youth, Intermediate Care Facility (ICF/IDD), Day Treatment, Article 16 Clinic Services, Specialty Hospital, Health Home Services Provided by Care Coordination Organizations, Independent Practitioner Services for Individual with Developmental Disabilities (IPSIDD), and OPWDD Crisis Services. **With clarification**, the Cost of Living Adjustment will be four percent (4%) and includes the following services:

OMH Outpatient Services, OMH Inpatient Services, OMH Clinic Services, OMH Rehabilitative Services, Children Family Treatment Support Services, Health Home Plus, Psychiatric Residential Treatment Facilities for Children and Youth, OASAS Outpatient Addiction Services, OASAS Freestanding (non-hospital) Inpatient Rehabilitation Services, OASAS Freestanding Inpatient Detox Services, OASAS Addiction Treatment Centers, OASAS Part 820 Residential Services, OASAS Residential Rehabilitation Services for Youth, Intermediate Care Facility (ICF/IDD), Day Treatment, Article 16 Clinic Services, Specialty Hospital, Health Home Services Provided by Care Coordination Organizations, Independent Practitioner Services for Individual with Developmental Disabilities (IPSIDD), and OPWDD Crisis Services.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$89.8 million.

Institutional Services and Non-Institutional

The following is a clarification to the March 29, 2023, noticed provision to adjust inpatient rates for hospital providers, certified under Article 28 of the Public Health Law, by an additional five percent (5%) across the board increase to the operating portion of the rates. **With clarification**, the across the board increase to the operating portion of the rates will now be seven and one-half percent (7.5%) and includes a non-institutional additional six and one-half percent (6.5%) across the board increase to the operating portion of outpatient rates for hospital providers, for services certified under Article 28 of the Public Health Law.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$244.4 million.

Non-Institutional

The following is a clarification to the March 29, 2023, noticed provision for the Assisted Living Program (ALP) and Adult Day Health Care (ADHC) which stated the Department of Health will adjust rates for these providers by a five percent (5%) across the board increase to the most recently active Operating rate in effect on 3/31/23. **With clarification**, the Department of Health will provide a seven and one-half percent (7.5%) across the board increase for Adult Day Health Care rates (ADHC) and a six and one-half percent (6.5%) across the board increase for Assisted Living Program rates (ALP), to the most recently active operating rate in effect on 3/31/23, for each provider.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$24.7 million.

Long Term Care Services

The following is a clarification to the March 29, 2023, noticed provision to adjust rates for Nursing Home (NH) providers by a five percent (5%) across the board increase to the most recently active Operating rate in effect on March 31, 2023, for each provider. **With clarification**, the across the board increase to the most recently active operating base rates will now be seven and one-half percent (7.5%).

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is \$403 million.

The public is invited to review and comment on this proposed State Plan Amendment, 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. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

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:

New York State Department of Health
Division of Finance and Rate Setting
99 Washington Ave
One Commerce Plaza
Suite 1432
Albany, New York 12210
spa_inquiries@health.ny.gov

Appendix V
2023 Title XIX State Plan
Second Quarter Amendment
Responses to Standard Funding Questions

LONG-TERM SERVICES
State Plan Amendment #23-0053

CMS Standard Funding Questions

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-D of the 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 payments, a complete listing of providers that return a portion of their payments, 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 (except for OPWDD's ICF/DD) receive and retain 100 percent of total Medicaid expenditures claimed by the State and the State does not require any provider to return any portion of such payments to the State, local government entities, or any other intermediary organization.

OPWDD's ICF/DD facilities are subject to a 5.5% Medicaid-reimbursable tax on gross receipts that are not kept by the provider but remitted to the state general fund for both voluntary and State-operated ICF/DDs. This assessment is authorized by Public Law 102-234, Section 43.04 of the New York State Mental Hygiene Law, Federal Medicaid regulations at 42 CFR 433.68. OPWDD recoups the assessment from the ICF/DD Medicaid payment before the payment is sent to the voluntary provider. For State operated ICF/DDs, the legislature appropriates an amount for payment of the assessment. Aside from the assessments, providers receive and retain all the Medicaid payments for ICF/DD services.

- 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 through 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 governmental 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: The Non-Federal share Medicaid provider payment (normal per diem and supplemental) is funded by a combination of the following funds/funding sources through enacted appropriations authority to the Department of Health (DOH) for the New York State Medicaid program or is funded by an IGT transferred from the counties.

Payment Type	Non-Federal Share Funding	4/1/22 – 3/31/23	
		Non-Federal	Gross
Nursing Homes Normal Per Diem	General Fund; Special Revenue Funds; County Contribution	\$3.215B	\$6.429B
Intermediate Care Facilities Normal Per Diem	General Fund; County Contribution	\$409M	\$818M
Nursing Homes Supplemental	General Fund	\$279M	\$558M
Intermediate Care Facilities Supplemental	General Fund	\$33M	\$65M
Nursing Homes UPL	IGT	\$148M	\$296M
Totals		\$4.083B	\$8.166B

- A. **General Fund:** Revenue resources for the State's General Fund includes taxes (e.g., income, sales, etc.), and miscellaneous fees (including audit recoveries and provider assessments). Medicaid expenditures from the State's General Fund are authorized from Department of Health Medicaid.
- 1) New York State Audit Recoveries: The Department of Health collaborates with the Office of the Medical Inspector General (OMIG) and the Office of the Attorney General (AG) in recovering improperly expended Medicaid funds. OMIG conducts and coordinates the investigation, detection, audit, and review of Medicaid providers and recipients to ensure they are complying with all applicable laws and regulation. OMIG recovers any improper payments through cash collections and voided claim recoveries. Cash collections are deposited into the State's General Fund to offset Medicaid costs.

In addition to cash collections, OMIG finds inappropriately billed claims within provider claims. To correct an error, OMIG and DOH process the current accurate claim, and reduce this claim by the inappropriate claim value to recoup the previous overclaim and decrease state spending.

- 2) Intermediate Care Facilities (ICF) Provider Service Assessment: Pursuant to New York State Mental Hygiene Law 43.04, a provider's gross receipts received on a cash basis for all services rendered at all ICFs is assessed at 5.5 percent. This assessment is deposited directly into the State's General Fund.

B. Special Revenue Funds:

Health Facility Cash Assessment Program (HFCAP) Fund: Pursuant to New York State Public Health Law 2807-d and Section 90 of Part H of Chapter 59 of the Laws of 2011, the total state assessment on each residential health care facility's gross receipts received from all patient care services and other operating income on a cash basis for residential health care facilities, including adult day service, but excluding, gross receipts attributable to payments received pursuant to Title XVIII of the federal Social Security Act (Medicare), is 6.8 percent.

NOTE: New York's Health Care taxes are either broad based and uniform (as in all HFCAP assessments except for the Personal Care Provider Cash Assessment) or have a specific exemption known as the "D'Amato provision (Federal PHL section 105-33 4722 (c))" which allows the HCRA surcharges to exist in their current format. The single tax which has been determined by the State to be an impermissible provider tax is the HFCAP charge on Personal Care Providers. The State does not claim any Federal dollars for the surcharge collected in this manner in order to comply with all Federal provider tax rules.

C. Additional Resources for Non-Federal Share Funding:

County Contribution: In State Fiscal Year 2006, through enacted State legislation (Part C of Chapter 58 of the laws of 2005), New York State "capped" the amount localities contributed to the non-Federal share of providers claims. This was designed to relieve pressure on county property taxes and the NYC budget by limiting local contributions having New York State absorb all local program costs above this fixed statutory inflation rate (3% at the time).

However, in State Fiscal Year 2013 New York State provided additional relief to Localities by reducing local contributions annual growth from three percent to zero over a three-year period. Beginning in State Fiscal Year 2016, counties began paying a fixed cost in perpetuity as follows:

Entity	Annual Amount
New York City	\$4.882B
Suffolk County	\$216M
Nassau County	\$213M
Westchester County	\$199M
Erie County	\$185M
Rest of State (53 Counties)	\$979M
Total	\$6.835B

By eliminating the growth in localities Medicaid costs, the State has statutorily capped total Statewide County Medicaid expenditures at 2015 levels. All additional county Medicaid costs are funded by the State through State funding as described above. DOH provides annual letters to counties providing weekly contributions. Contributions are deposited directly into State escrow account and used to offset 'total' State share Medicaid funding.

NOTE: The Local Contribution is not tied to a specific claim or service category and instead is a capped amount based on 2015 county spending levels as stated above. Each deposit received is reviewed and compared to the amount each county is responsible to contribute to the Medicaid program to verify the county funds received are eligible for Medicaid expenses.

D. IGT Funding:

New York State requests the transfer of the IGT amounts from entities prior to the release of payments to the providers. The entities transferring IGT amounts are all units of government, and the nonfederal share is derived from state or local tax revenue funded accounts only. The providers keep and retain Medicaid payments. Please note that entities have taxing authority, and the State does not provide appropriations to the entities for IGTs.

Provider	Entity Transferring IGT Funds	4/1/22-3/31/23 IGT Amount
A Holly Patterson Extended Care Facility	Nassau County	\$14M
Albany County Nursing Home	Albany County	\$5M
Chemung County Health Center	Chemung County	\$4M
Clinton County Nursing Home	Clinton County	\$2M
Coler Rehabilitation & Nursing Care Center	New York City	\$12M
Dr. Susan Smith Mckinney Nursing and Rehab Center	Kings County	\$7M
Glendale Home	Schenectady County	\$5M
Henry J. Carter Nursing Home	New York City	\$5M
Lewis County General Hospital-Nursing Home Unit	Lewis County	\$4M
Livingston County Center for Nursing and Rehabilitation	Livingston County	\$7M
Monroe Community Hospital-Nursing Home Unit	Monroe County	\$16M
New Gouverneur Hospital-Nursing Home Unit	New York City	\$5M
Sea View Hospital Rehabilitation Center and Home	Richmond County	\$8M
Sullivan County Adult Care Center	Sullivan County	\$2M

Terrace View Long Term Care	Erie County	\$11M
The Pines Healthcare & Rehab Centers Machias Camp	Cattaraugus County	\$3M
The Pines Healthcare & Rehab Centers Olean Camp	Cattaraugus County	\$3M
The Valley View Center for Nursing Care and Rehab	Orange County	\$11M
Van Rensselaer Manor	Rensselaer County	\$10M
Wayne County Nursing Home	Wayne County	\$4M
Willow Point Rehabilitation & Nursing Center	Broome County	\$6M
Wyoming County Community Hospital-NH Unit	Wyoming County	\$4M
Total		\$148M

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: Below is a list of nursing home and ICF supplemental payments:

Payment Type	Private	State Government	Non-State Government	4/1/22-3/31/23 Gross Total
Nursing Home Reforms	\$187M	\$0	\$0	\$187M
2% Supplemental Payment	\$130M	\$1M	\$9M	\$140M
1.5% ATB Restoration	\$88M	\$0.6M	\$5M	\$94M
Workforce Vital Access Program	\$51M	\$0	\$0	\$51M
Advanced Training Initiative	\$43M	\$0	\$3M	\$46M
Cinergy	\$30M	\$0	\$0	\$30M
Vital Access Program	\$7M	\$0	\$0	\$7M
Bridgeview Settlement	\$2M	\$0	\$0	\$2M
Nursing Home Quality Pool	(\$1.2M)	\$0.4M	\$0.8M	\$0
Nursing Home UPL	\$0	\$0	\$295M	\$295M
ICF Worker Bonus	\$65M	\$0	\$0	\$65M
Total	\$603M	\$2M	\$313M	\$918M

The Medicaid payments under this State Plan Amendment are not supplemental payments.

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 Intermediate Care Facilities (ICFs) UPL calculation is a payment-to-charges calculation for state government and private facilities (note: there are no non-state governmental ICFs). The Medicaid payments under this State Plan Amendment will be included in the 2023 ICF UPL when it is submitted to CMS.

- 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: Providers do not receive payments that in the aggregate exceed their reasonable costs of providing services. If any providers received payments that in the aggregate exceeded their reasonable costs of providing services, the State would recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report.

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 complies 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 17-0065, and documentation of such is included with this submission. To date, no feedback has been received from any tribal representative in response to the proposed change in this SPA.