NEW YORK STATE OF OPPORTUNITY. Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

September 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 #23-0093
Long Term Care Facility Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #23-0093 to the Title XIX (Medicaid) State Plan for long term care facility services to be effective August 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). A copy of the public notice of this proposed amendment, which was given in the New York State Register on July 26, 2023, 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 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,

[redacted]

Amir Bassiri
Medicaid Director
Office of Health Insurance Programs

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE & MEDICAID SERVICES

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 23-0093

2. STATE: NY

3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT: (●) XIX ( ) XXI

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

4. PROPOSED EFFECTIVE DATE
August 1, 2023

5. FEDERAL STATUTE/REGULATION CITATION
§ 1905(a)(4)(a) Nursing Facility services

6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY 08/01/23-09/30/23 $ 52,000
b. FFY 10/01/23-09/30/24 $ 312,000

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
Attachment 4.19-C: Page 1.1

8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*
Attachment 4.19-C: Page 1.1

9. SUBJECT OF AMENDMENT
Reinstate Hospitalization Bed Hold for Five NYS Veteran's Homes

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

11. SIGNATURE OF STATE AGENCY OFFICIAL
[redacted]

12. TYPED NAME
Amir Bassiri

13. TITLE
Medicaid Director

14. DATE SUBMITTED
September 29, 2023

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

FOR CMS USE ONLY

16. DATE RECEIVED

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
Third Quarter Amendment
Amended SPA Pages

1905(a)(4)(a) Nursing Facility services

Effective January 1, 2019, for reserved bed days provided on behalf of persons 21 years of age or older:

(i) payments for reserved bed days for patients on hospice will be made at 50% of the Medicaid rate otherwise payable to the facility for the services provided to such person.

(a) payment to a facility for reserved bed days provided on behalf of such person for leaves of absences ~~may~~ will not exceed 14 days in any 12 – month period.

(ii) payments for reserved bed days related to therapeutic leaves of absence will be made at 95% of the Medicaid rate otherwise payable to the facility for services provided to such person.

(a) payment to a facility for reserved bed days provided on behalf of such person for therapeutic leaves of absences ~~may~~ will not exceed 10 days in any 12-month period.

(iii) payments for reserved bed days related to hospitalization leaves of absence, for the five New York State Veteran's homes, will be made at 50% of the Medicaid rate otherwise payable to the facility for services provided to such person.

(a) payment to a facility for reserved bed days provided on behalf of such person for hospitalization leaves of absences will not exceed 14 days in any 12-month period.

Reserved bed days provided on behalf of persons younger than 21 years of age will be made at 100% of the Medicaid rate.

In computing reserved bed days, the day of discharge from the residential health care facility will be counted, but not day of readmission.

Appendix II
2023 Title XIX State Plan
Third Quarter Amendment
Summary

SUMMARY
SPA #23-0093

This State Plan Amendment proposes to reimburse nursing home bed hold days for hospitalization for the five New York State Veteran's nursing homes in accordance with Chapter 586 of the Laws of 2022.

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

Authorizing Provisions
SPA #23-0093

CHAPTER 586 of the Laws of 2022

Section 1. Section 2808 of the public health law is amended by adding a new subdivision 25-a to read as follows:

25-a. Reserved bed days for state veterans' homes. (a) For purposes of this subdivision, a "reserved bed day" is a day for which the state pays New York State Veterans' Home at Oxford, the New York State Veterans' Home at St. Albans, the New York State Veterans' Home at Batavia, the New York State Veterans' Home at Montrose or the Long Island State Veterans' Home to reserve a bed for a person eligible for medical assistance pursuant to title eleven of article five of the social services law while he or she is temporarily hospitalized.

(b) (i) Payments for reserved bed days shall be made at fifty percent of the Medicaid rate otherwise payable to the facility for services provided on behalf of the person.

(ii) Payment to a facility for reserved bed days provided on behalf of the person for temporary hospitalizations may not exceed fourteen days in any twelve-month period.

(iii) The person must have resided in the applicable State Veterans' home for at least thirty days since the date of his or her initial admission.

(iv) Unless medically contraindicated, the applicable State Veterans' home shall reserve the same bed and room the person occupied before being hospitalized or placed on a therapeutic leave of absence.

(v) Reserved bed days under this subdivision are in addition to reserve bed days for therapeutic leave of absence under subdivision twenty-five of this section.

(vi) This subdivision shall apply subject to the availability of federal financial participation.

§ 2. This act shall take effect on the ninetieth day after it shall have become a law. Effective immediately the commissioner of health shall make regulations and take other actions reasonably necessary to implement this act on that date.

Appendix IV
2023 Title XIX State Plan
Third Quarter Amendment
Public Notice

McHenry Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.499 mgd (peak day) (Docket No. 20180901).

10. Project Sponsor and Facility: Indian Hills Golf and Tennis Club, Shamokin Township, Northumberland County, Pa. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 19980504).

11. Project Sponsor and Facility: Inflection Energy (PA) LLC (Loyalsock Creek), Upper Fairfield Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 1.700 mgd (peak day) (Docket No. 20221214).

12. Project Sponsor: Lucky Bear, LLC. Project Facility: Liberty Forge Golf Course (Yellow Breeches Creek), Lower and Upper Allen Townships, Cumberland County, Pa. Applications for renewal of surface water withdrawal of up to 0.432 mgd (peak day) and consumptive use of up to 0.375 mgd (peak day) (Docket No. 19980906).

13. Project Sponsor and Facility: Montgomery Water Authority, Clinton Township, Lycoming County, Pa. Modification to increase groundwater withdrawal (30-day average) from Well 3 by an additional 0.098 mgd, for a total groundwater withdrawal of up to 0.318 mgd, and increase the total system withdrawal limit (30-day average) from 0.492 mgd to 0.730 mgd from Wells 1, 3, and 4 (Docket No. 20210304).

14. Project Sponsor and Facility: Nicholas Meat, LLC, Greene Township, Clinton County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.288 mgd from Well WS-1, 0.173 mgd from Well WS-3, and 0.144 mgd from Well WS-4.

15. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20180909).

16. Project Sponsor and Facility: Repsol Oil & Gas USA, LLC (Wappasening Creek), Windham Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.999 mgd (peak day) (Docket No. 20180910).

17. Project Sponsor and Facility: Seneca Resources Company, LLC (Crooked Creek), Middlebury Township, Tioga County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

18. Project Sponsor: South Slope Development Corporation. Project Facility: Song Mountain Ski Resort, Town of Preble, Cortland County, N.Y. Applications for renewal of surface water withdrawal of up to 0.999 mgd (30-day average) from an unnamed tributary to Crooked Lake, consumptive use of up to 0.249 mgd (30-day average), and groundwater withdrawal of up to 0.960 mgd (30-day average) from Well MW-3 (Docket No. 20070901).

19. Project Sponsor and Facility: S.T.L. Resources, LLC (Pine Creek), Pike Township, Potter County, Pa. Application for surface water withdrawal of up to 3.000 mgd (peak day).

20. Project Sponsor: T & C Mobile Home & Construction Services, LLC. Project Facility: Glezen Mine, Town of Lisle, Broome County, N.Y. Application for consumptive use of up to 0.099 mgd (30-day average).

21. Project Sponsor and Facility: Village of Hamilton, Town of Hamilton, Madison County, N.Y. Applications for renewal of groundwater withdrawals (30-day averages) of up to 1.730 mgd from Payne Brook Well 1 and 1.500 mgd from Payne Brook Well 2 (Docket Nos. 19871101 and 19970706).

22. Project Sponsor and Facility: Village of Sidney, Town of Sidney, Delaware County, N.Y. Modification to extend the approval term of the groundwater withdrawal approval (Docket No. 19860201) to provide time for development of a replacement source for existing Well 2 88.

Opportunity to Appear and Comment:

Interested parties may call into the hearing to offer comments to the Commission on any business listed above required to be the subject of a public hearing. Given the nature of the meeting, the Commission strongly encourages those members of the public wishing to provide oral comments to pre-register with the Commission by e-mailing Jason Oyler at joyler@srbc.net before the hearing date. The presiding officer reserves the right to limit oral statements in the interest of time and to control the course of the hearing otherwise. Access to the hearing via telephone will begin at 6:15 p.m. Guidelines for the public hearing are posted on the Commission's website, www.srbc.net, before the hearing for review. The presiding officer reserves the right to modify or supplement such guidelines at the hearing. Written comments on any business listed above required to be the subject of a public hearing may also be mailed to Mr. Jason Oyler, Secretary to the Commission, Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, Pa. 17110-1788, or submitted electronically through https://www.srbc.net/regulatory/public-comment/. Comments mailed or electronically submitted must be received by the Commission on or before Monday, August 21, 2023, to be considered.

Authority: Pub. L. 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: July 6, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission

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 Chapter 586 of the Laws of 2022. The following changes are proposed:

Long Term Care Services

Effective on or after August 1, 2023, the Department of Health will reimburse nursing home bed hold days for hospitalization for the five New York State Veteran's nursing homes, at fifty percent of the Medicaid rate otherwise payable to the facility for services in certain situations.

The estimated net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2023-2024 is $416,000.

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

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

LONG-TERM SERVICES
State Plan Amendment #23-0093

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.

		4/1/23 – 3/31/24	
Payment Type	**Non-Federal Share Funding**	**Non-Federal**	**Gross**
Nursing Homes Normal Per Diem	General Fund; Special Revenue Funds; County Contribution	$3.545B	$7.089B
Intermediate Care Facilities Normal Per Diem	General Fund; County Contribution	$438M	$877M
Nursing Homes Supplemental	General Fund	$159M	$318M
Intermediate Care Facilities Supplemental	General Fund	$0	$0
Nursing Homes UPL	IGT	$92M	$184M
Totals		**$4.234B**	**$8.468B**

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 precent 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	$5.200B
Suffolk County	$226M
Nassau County	$217M
Westchester County	$204M

Erie County	$194M
Rest of State (53 Counties)	$1.187B
Total	**$7.228B**

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	4/1/23-3/31/24 IGT Amount
A Holly Patterson Extended Care Facility	Nassau County	$8M
Albany County Nursing Home	Albany County	$3M
Chemung County Health Center	Chemung County	$2M
Clinton County Nursing Home	Clinton County	$1M
Coler Rehabilitation & Nursing Care Center	New York City	$8M
Dr. Susan Smith Mckinney Nursing and Rehab Center	Kings County	$4M
Glendale Home	Schenectady County	$3M
Henry J. Carter Nursing Home	New York City	$3M
Lewis County General Hospital-Nursing Home Unit	Lewis County	$2M
Livingston County Center for Nursing and Rehabilitation	Livingston County	$5M
Monroe Community Hospital-Nursing Home Unit	Monroe County	$9M
New Gouverneur Hospital-Nursing Home Unit	New York City	$3M
Sea View Hospital Rehabilitation Center and Home	Richmond County	$5M
Sullivan County Adult Care Center	Sullivan County	$2M
Terrace View Long Term Care	Erie County	$7M
The Pines Healthcare & Rehab Centers Machias Camp	Cattaraugus County	$2M
The Pines Healthcare & Rehab Centers Olean Camp	Cattaraugus County	$2M
The Valley View Center for Nursing Care and Rehab	Orange County	$7M
Van Rensselaer Manor	Rensselaer County	$6M

Wayne County Nursing Home	Wayne County	$3M
Willow Point Rehabilitation & Nursing Center	Broome County	$4M
Wyoming County Community Hospital-NH Unit	Wyoming County	$3M
Total		**$92M**

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	4/1/23-3/31/24 Gross Total
Advanced Training Initiative	$43M	$0	$3M	$46M
Cinergy	$30M	$0	$0	$30M
1% Supplemental Payment	$130M	$1M	$9M	$140M
Enhanced ATI (VAP Workforce)	$102M	$0	$0	$102M
Nursing Home UPL	$0	$0	$184M	$184M
Total	**$306M**	**$1M**	**$196M**	**$502M**

   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.**

   The Medicaid payments authorized under this State Plan Amendment do not impact the UPL demonstrations.

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.