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**State/Territory Name:** **New York**

**State Plan Amendment (SPA) #:** **17-0006**

This file contains the following documents in the order listed:


1) Approval Letter
2) CMS 179 Form
3) Approved SPA Page

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
New York Regional Office
26 Federal Plaza, Room 37-100
New York, NY 10278

DIVISION OF MEDICAID AND CHILDREN'S HEALTH OPERATION

**DMCHO-PV-SPA-NY-17-0006-Approval**

December 11, 2017

Jason A. Helgerson
State Medicaid Director
Deputy Commissioner
Office of Health Insurance Programs
NYS Department of Health
Corning Tower (OCP-1211)
Albany, New York 12237

Re: NY SPA 17-0006

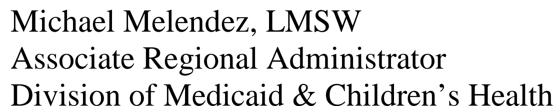
Dear Mr. Helgerson:

We have reviewed the proposed amendment to Attachment 4.19-B of your Medicaid State plan submitted under transmittal number (TN) 17-0006. Effective September 1, 2017, this amendment proposes to expand the population served by Adult Day Health Care Programs approved as providers of specialized services for registrants with AIDS to HIV-negative persons at high risk for HIV.

We conducted our review of the submittal according to the statutory requirements at sections 1902(a)(2), 1902(a)(13), 1902(a)(30), 1903(a) and 1923 of the Social Security Act and the regulations at 42 CFR 447 Subpart C. The purpose of this letter is to inform you that New York 17-0006 is approved effective September 1, 2017. We are enclosing the CMS-179 and the approved plan page.

If you have any questions, please contact Patricia I Vasquez at (212) 676-2470.

Sincerely,



Michael Melendez, LMSW
Associate Regional Administrator
Division of Medicaid & Children's Health

cc: J. Ulberg
R. Deyette
F. Laufer
R. Weaver
R. Holligan
P. Vasquez
M. Tabakov

FORM APPROVED
OMB NO. 0938-0193

**TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL**

**FOR: HEALTH CARE FINANCING ADMINISTRATION**

1. TRANSMITTAL NUMBER: **17-0006**

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: **September 1, 2017**

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(r)(5) of the Social Security Act and 42 CFR 447**

7. FEDERAL BUDGET IMPACT: **(in thousands)**
**a. FFY** 09/01/17-09/30/17 $ 29.35
**b. FFY** 10/01/17-09/30/18 $606.84

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:

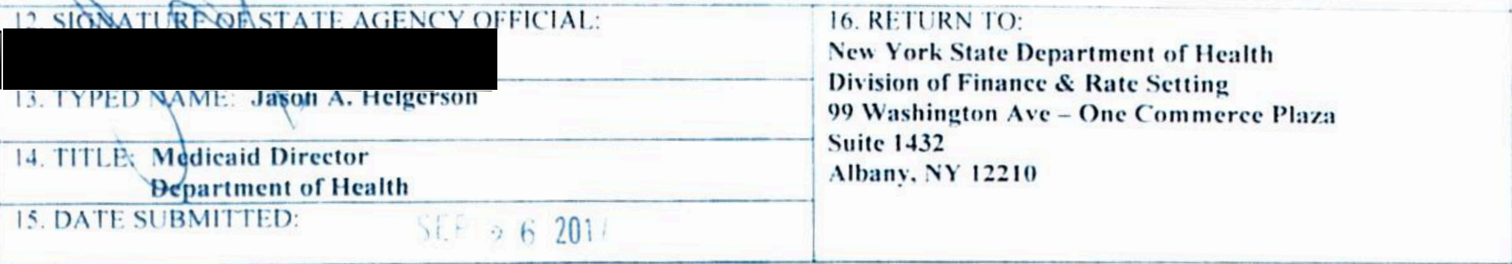
**Attachment 4.19-B: Page 2, 2(a)**
**Attachment 4.19-B: Page 7(b), 7(b)(i), 7(b)(ii)**

9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*:

**Attachment 4.19-B: Page 2, 2(a)**
**Attachment 4.19-B: Page 7(b), 7(b)(i), 7(b)(ii)**

10. SUBJECT OF AMENDMENT:
**AIDS adult day health care service expansion to persons at high risk of HIV. (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:

13. TYPED NAME: **Jason A. Helgerson**

14. TITLE: **Medicaid Director**
**Department of Health**

15. DATE SUBMITTED: SEP 26 2017

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

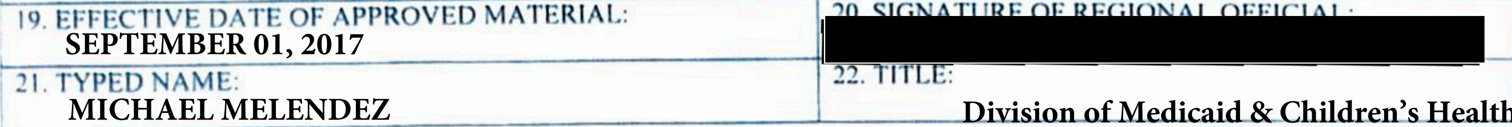
**FOR REGIONAL OFFICE USE ONLY**

17. DATE RECEIVED:

18. DATE APPROVED: **DECEMBER 11, 2017**

PLAN APPROVED – ONE COPY ATTACHED

19. EFFECTIVE DATE OF APPROVED MATERIAL: **SEPTEMBER 01, 2017**



20. SIGNATURE OF REGIONAL OFFICIAL:

21. TYPED NAME: **MICHAEL MELENDEZ**

22. TITLE: **Division of Medicaid & Children's Health**

23. REMARKS:

**Ordered Ambulatory Services (specific services performed by a free-standing clinic on an ambulatory basis upon the order of a qualified physician, physician's assistant, dentist or podiatrist to test, diagnose or treat a recipient or specimen taken from a recipient).**

Fee schedule developed by the Department of Health and approved by the Division of the Budget for each type of service, as appropriate. Payment for these services are in compliance with 42 CFR 447.325.

**[AIDS/HIV] Adult Day Health Care Services For Persons with HIV/AIDS and Other High-need Populations Diagnostic And Treatment Centers**

Medical assistance rates of payment for adult day health care services provided on and after December 1, 2002 to patients with AIDS/HIV and other high-need populations by a free standing ambulatory care facility shall be increased by three percent.

This increase to rates of payment will be for purposes of improving recruitment and retention of non-supervisory workers or any worker with direct patient care responsibility. Programs are prohibited from using the funds for any other purpose. The Commissioner of Health is authorized to audit each program to ensure compliance with the purpose for which this funding is provided and shall recoup any funds determined to have been used for purposes other than recruitment and retention.

To generate a threshold day care bill, the provider must ensure that clients receive a core service [and be in attendance for a minimum of three hours, and over the course of the week, receive a minimum of three hours of health care services.] in accordance with clients' comprehensive care plans. Health care services are defined as both the core services and health related services that are therapeutic in nature and directly or indirectly related to the core services, which must be identified on the client's comprehensive care plan. Each visit must include a core service. A bill cannot be generated unless one or more services are provided in accordance with a client's comprehensive care plan [if these two requirements are not met].

**Core services include:**

- Medical visits
- Nursing visits

- Individual and group Mental Health services
- Individual and group Nutrition counseling services
- Individual and group Substance Abuse counseling services
- Medication group counseling
- Activities of Daily Living
- Physical and Occupational Therapy services
- Case management services
- Prevention/Risk reduction counseling
- Any routine assessment performed by an appropriately credentialed staff person

**Health related (non-core) services include:**

- Group exercise sessions
- Acupuncture
- Breakfast and/or lunch
- Therapeutic massage
- Yoga
- Pastoral care
- Therapeutic recreation and structured socialization services
- Tai-chi

For adult day health care services provided to patients diagnosed with HIV/AIDS and to other high-need populations on and after January 1, 2007, medical assistance rates of payment to diagnostic and treatment centers shall be increased up to an annual amount of $2.8 million in the aggregate. Such amount shall be allocated proportionally among eligible providers based on the medical assistance visits reported by each provider in the most recently available cost report, as submitted to the Department of Health. Such allocated amounts will be included as an adjustment to each provider's daily rate of payment for such services.

Effective for adult day health care services rendered on and after January 1, 2007 through December 31, 2009, and for adult day health care services provided to patients diagnosed with HIV/AIDS and to other high-need populations on and after April 1, 2009, medical assistance rates of payments shall reflect trend factor adjustments computed in accordance with the previously approved trend factor methodology. Such adjustments shall be applied to the operational cost component of the rate.

Effective April 1, 2011 through June 30, 2011, rates of payment for adult day health care services provided to patients with AIDS or other HIV related illnesses shall be increased by an additional aggregate amount of $1,156,650 to be allocated proportionally among such providers based on the Medicaid visits as reported in the most recently available cost report submitted to the State by January 1, 2011.

(f) For facilities without a skilled nursing facility rate, computed in accordance with section 86-2.10 or section 86-2.15 of this Subpart, in effect on January 1, 1990, a weighted average rate for each region listed in Appendix 13A of this Title shall be used as the proxy for the facility's January 1, 1990 skilled nursing facility rate in determining the maximum daily rate for such facilities as set forth in subdivisions (d) and (e) of this section. The weighted average rate for each region shall be equal to the statewide weight average 1990 skilled nursing facility rate with the statewide average direct component and indirect component of the rate adjusted respectively by the regional direct and indirect input price adjustment factors described in section 86-2.10. The statewide weighted average rate shall be computed by multiplying each residential health care facility's 1990 skilled nursing facility rate times its 1990 skilled nursing facility patient days, summing the result statewide, and dividing by the statewide total 1990 skilled nursing facility patient days. The 1990 rate used in computing the statewide weighted average rate shall be the latest 1990 rate in effect on July 1, 1992 for the former skilled nursing level of care which is contained in the rate which has been certified by the commissioner pursuant to section 2807(3) of the Public Health Law.

(g) Effective April 1, 1994 and thereafter reimbursement for Adult Day Health Care services provided to registrants with acquired immunodeficiency syndrome (AIDS) and other human immunodeficiency virus (HIV) related illnesses and to other high-need populations shall be established as follows. Payment shall be a per visit price with not more than one visit per day per registrant. The rate of payment shall consist of a single price per visit for the operating component, transportation, and the capital cost component and shall be based upon a rate of $160 per visit per 24 hour period. To be eligible for reimbursement a residential health care facility must be certified by the Department to provide adult day health care services for AIDS/HIV registrants and, effective September 1, 2017, to other high-need registrants. The price shall be full reimbursement for the following: (i) physician services, nursing services, and other related professional expenses directly incurred by the licensed residential health care facility; (ii) administrative, personnel, business office, data processing, recordkeeping, housekeeping, food services, transportation, plant operation and maintenance and other related facility overhead expenses; (iii) all other services required for adult day health care in residential health care facilities appropriate to the level of general medical care required by the patient; (iv) all medical supplies, immunizations, and drugs directly related to the provision of services except for those drugs used to treat AIDS

patients for which fee-for-service reimbursement is available as determined by the Department of Health.

Medical assistance rates of payment for adult day health care services provided on and after December 1, 2002 to patients with AIDS/HIV and other high-need populations by a residential health care facility shall be increased by three percent.

This increase to rates of payment will be for purposes of improving recruitment and retention of non-supervisory workers or any worker with direct patient care responsibility. Programs are prohibited from using the funds for any other purpose. The Commissioner of Health is authorized to audit each program to ensure compliance with the purpose for which this funding is provided and shall recoup any funds determined to have been used for purposes other than recruitment and retention.

To generate a threshold day care bill, the provider must ensure that clients receive a core service [and be in attendance for a minimum of three hours, and over the course of the week, receive a minimum of three hours of health care services.] in accordance with clients' comprehensive care plans. Health care services are defined as both the core services and health related services that are therapeutic in nature and directly or indirectly related to the core services, which must be identified on the client's comprehensive care plan. Each visit must include a core service. A bill cannot be generated unless one or more services are provided in accordance with a client's comprehensive care plan [if these two requirements are not met].

**Core services include:**

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- Tai-chi

For adult day health care services provided to patients diagnosed with HIV/AIDS and other high-risk populations on and after January 1, 2007, medical assistance rates of payment to residential health care facilities shall be increased up to an annual amount of $2.8 million in the aggregate. Such amount shall be allocated proportionally among eligible providers based on the medical assistance visits reported by each provider in the most recently available cost report, as submitted to the Department of Health. Such allocated amounts will be included as an adjustment to each provider's daily rate of payment for such services.

For adult day health care services rendered on and after January 1, 2007, through December 31, 2009, and for adult day health care services provided to patients diagnosed with HIV/AIDS and other high-risk populations on and after April 1, 2009, medical assistance rates of payments shall reflect trend factor adjustments computed in accordance with the previously approved trend factor methodology contained in this Attachment.

Effective April 1, 2011 through June 30, 2011, rates of payment for adult day health care services provided to patients with AIDS or other HIV related illnesses shall be increased by an additional aggregate amount of $946,350 to be allocated proportionally among such providers based on the Medicaid visits as reported in the most recently available cost report submitted to the State by January 1, 2011.

(h) For the period April 1, 2007 and thereafter, rates of payment for adult day health care services provided by residential health care facilities, shall be computed in accordance with the following:

(i) the operating component of the rate for an adult day health care program that has achieved an occupancy percentage of 90% or greater for a calendar year, prior to April 1, 2007, shall be calculated utilizing allowable costs reported in the 2004, 2005, or 2006 calendar year residential health care facility cost report filed by the sponsoring residential health care facility, whichever is the earliest of such calendar year cost reports in which the program has achieved an occupancy percentage of 90% or greater, except that programs receiving rates of payment based on allowable costs for a period prior to April 1, 2007 shall continue to receive rates of payment based on that period;

(ii) for programs that achieved an occupancy percentage of 90% or greater prior to calendar year 2004 but did not maintain occupancy of 90% or greater in calendar years 2004, 2005, or 2006, the operating component of the rate of payment will be calculated utilizing allowable costs reported in the 2004 calendar year cost report divided by visits imputed at 90% occupancy.