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**State/Territory Name: New York**

**State Plan Amendment (SPA) #: 18-0022**

This file contains the following documents in the order listed:

- 1) NY Regional Office approval letter
- 2) Pharmacy Division approval letter
- 3) CMS-179 Form
- 4) Approved SPA pages

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

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September 5, 2018

Mrs. Donna Frescatore  
State Medicaid Director  
New York State Department of Health  
Bureau of Federal Relations & Provider Assessments  
99 Washington Ave –One Commerce Plaza- Suite 1460  
Albany, NY 12210

Dear Ms. Frescatore,

We have completed our review of the submission of New York State Plan Amendment (SPA) 18-0022 which was received in our office on June 22, 2018 and find it acceptable for incorporation into New York's Medicaid State Plan. This SPA proposes to allow the updating of New York State Department of Health professional dispensing fee (PDF) for brand name, generic and over-the-counter (OTC) outpatient drugs to align with current costs. This SPA proposes to revise the professional dispensing fee to \$10.08 with an effective date of April 1, 2018.

Please note that the approval date of this SPA is September 5, 2018 with an effective date of April 1, 2018. Copy of the approved State Plan pages and the signed CMS-179 are enclosed.

CMS appreciates the significant amount of work your staff dedicated to this state plan amendment. If you have any questions concerning this SPA, please feel free to contact Ivelisse M. Salce at (212) 616-2411 or at [Ivelisse.Salce@cms.hhs.gov](mailto:Ivelisse.Salce@cms.hhs.gov).

Sincerely,

Ricardo Holligan  
Acting Associate Regional Administrator  
Division of Medicaid and Children's Health

Cc: Lisa Choquet, MHA, Policy Analyst, CMS Medicaid Division of Pharmacy



**Center for Medicaid and CHIP Services**

**Disabled and Elderly Health Programs Group**

September 5, 2018

Mrs. Donna Frescatore  
Medicaid Director  
New York State Department of Health  
Bureau of Federal Relations & Provider Assessments  
99 Washington Ave – One Commerce Plaza, Suite 1460  
Albany, NY 12210

Dear Mrs. Frescatore:

We have reviewed New York State Plan Amendment (SPA) 18-0022 received in the Centers for Medicare and Medicaid Services (CMS) New York Regional Office on June 22, 2018. This SPA proposes to allow the updating of New York State Department of Health professional dispensing fee (PDF) for brand name, generic and over-the-counter (OTC) outpatient drugs to align with current costs. This SPA proposes to revise the professional dispensing fee to \$10.08 with an effective date of April 1, 2018.

Based on the information provided and consistent with the regulations at 42 CFR 430.20, we are pleased to inform you that SPA 18-0022 is approved with an effective date of April 1, 2018.

The \$10.08 PDF fee that the state submitted in its SPA is set by state statute, and was determined using various survey methodologies. In considering the proposed PDF, the state was required to provide adequate data, such as national or state surveys or studies, or other reliable data to demonstrate that the acquisition cost methodology and PDF being paid are sufficient to ensure that New York Medicaid beneficiaries will have access to pharmacy services. In keeping with the requirements of section 1902 (a)(30)(A) of the Social Security Act, we believe the state has demonstrated that their reimbursement is consistent with efficiency, economy, and quality of care, and is sufficient to ensure that care and services are available at least to the extent they are available to the general population in the geographic area.

NYS Medicaid provided a 30-day Public Notice and comment period for the change in reimbursement. No public comments were submitted to NYS Medicaid regarding the proposed change in PDF.

During our review of the state's methodology to determine the PDF, we noted that New York plans to annually update the PDF through the state's annual budget process to reflect current costs of dispensing. We encourage the state to undertake this process to assure that the PDF keeps pace with the actual costs of dispensing.

In keeping with the requirements of section 1902 (a)(30)(A) of the Social Security Act, we believe the state has demonstrated that their reimbursement is consistent with efficiency, economy, and quality of care, and are sufficient to ensure that care and services are available at least to the extent they are available to the general population in the geographic area. We believe that there is evidence regarding

Page 2 – Mrs. Donna Frescatore

the sufficiency of New York's pharmacy provider network at this time to approve SPA 18-0022. Specifically, New York has reported to CMS that 4,695 of the state's 5,452 licensed in-state retail pharmacies are enrolled in New York's Medicaid fee-for-service program. With over an 86 percent participation rate, we can infer that New York's beneficiaries will have access to pharmacy services at least to the extent available to the general population since Medicaid requires that beneficiaries be provided access to all covered outpatient drugs of participating drug manufacturers with a rebate agreement through a broad pharmacy network. In contrast, commercial insurers often have more limited drug formularies and a more limited pharmacy network.

As noted above, we believe that there is evidence regarding the sufficiency of New York's PDF from provided data and other credible sources to approve SPA 18-0022 with an effective date of April 1, 2018. A copy of the signed CMS-179 form, as well as the pages approved for incorporation into New York's state plan will be forwarded by the New York Regional Office.

If you have any questions regarding this request, please contact Lisa Shochet at (410) 786-5445 or [Lisa.Shochet@cms.hhs.gov](mailto:Lisa.Shochet@cms.hhs.gov).

Sincerely,

John M. Coster, Ph.D., R.Ph.  
Director, Division of Pharmacy

cc: Michael Melendez, ARA, New York Regional Office  
Ivelisse Salce, New York Regional Office

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>  <b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b>		1. TRANSMITTAL NUMBER: <b>18-0022</b>	2. STATE <b>New York</b>
		3. PROGRAM IDENTIFICATION: <b>TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)</b>	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		4. PROPOSED EFFECTIVE DATE <b>April 1, 2018</b>	
5. TYPE OF PLAN MATERIAL (Check One):  <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT			
<i>COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)</i>			
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 04/01/18-09/30/18: \$166.00 b. FFY 10/01/18-09/30/19: \$398.00	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  <b>Attachment 4.19-B: Page 4(d)</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable):  <b>Attachment 4.19-B: Page 4(d)</b>	
10. SUBJECT OF AMENDMENT: <b>Revise Pharmacy Dispensing Fee (FMAP = 50%)</b>			
11. GOVERNOR'S REVIEW (Check One): <input checked="" type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL:		16. RETURN TO: <b>New York State Department of Health Bureau of Federal Relations &amp; Provider Assessments 99 Washington Ave – One Commerce Plaza Suite 1460 Albany, NY 12210</b>	
13. TYPED NAME: <b>Donna Frescatore</b>			
14. TITLE: <b>Medicaid Director Department of Health</b>			
15. DATE SUBMITTED: <b>JUN 22 2018</b>			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED:		18. DATE APPROVED: <b>SEPTEMBER 05, 2018</b>	
<b>PLAN APPROVED – ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL: <b>APRIL 01, 2018</b>		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: <b>RICARDO HOLLIGAN</b>		22. TITLE: <b>Acting Associate Regional Administrator Division of Medicaid &amp; Children's Health</b>	
23. REMARKS:			

**New York  
4(d)**

Outpatient Drug Reimbursement

1. Reimbursement for Prescribed Drugs (including specialty drugs) dispensed by a retail pharmacy; an institutional or long term care pharmacy; an Indian Health Service, tribal or urban Indian pharmacy; or any other pharmacy enrolled in the NYS Medicaid FFS Program is as follows:
  - a. Reimbursement for Brand Name Drugs is the lower of:
    - i. National Average Drug Acquisition Cost (NADAC) or, in the event of no NADAC pricing available, Wholesale Acquisition Cost (WAC) less 3.3%; plus, the professional dispensing fee in Section 2; or
    - ii. the billing pharmacy's usual and customary price charged to the general public.
  - b. Reimbursement for Generic Drugs is the lower of:
    - i. NADAC or, in the event of no NADAC pricing available, WAC less 17.5%; plus, a professional dispensing fee; or
    - ii. the Federal Upper Limit (FUL) plus the professional dispensing fee in Section 2; or
    - iii. the State Maximum Acquisition Cost (SMAC) plus the professional dispensing fee in Section 2; or
    - iv. the billing pharmacy's usual and customary price charged to the general public.
  - c. Reimbursement for Nonprescription Drugs is the lower of:
    - i. NADAC or, in the event of no NADAC pricing available, WAC; plus, if a covered outpatient drug, the professional dispensing fee in Section 2;
    - ii. the FUL plus, if a covered outpatient drug, the professional dispensing fee in Section 2; or
    - iii. the SMAC plus, if a covered outpatient drug, the professional dispensing fee in Section 2; or
    - iv. the billing pharmacy's usual and customary price charged to the general public.
2. The professional dispensing fee for covered outpatient drugs, including 340B-purchased drugs, when dispensed by a retail pharmacy; an institutional or long term care pharmacy; an Indian Health Service, tribal or urban Indian pharmacy; or any other pharmacy enrolled in the NYS Medicaid FFS Program, is \$10.08.
3. Payment for drugs dispensed by pharmacies that are acquired at a nominal price as referenced in 42 CFR § 447.502 is at actual acquisition cost plus the professional dispensing fee in Section 2.
4. Payment for drugs dispensed by pharmacies that are acquired via the Federal Supply Schedule is at actual acquisition cost plus the professional dispensing fee in Section 2.

TN           #18-0022          

Approval Date           09/05/2018          

Supersedes TN           #17-0005          

Effective Date           04/01/2018