

**NEW YORK**  
state department of  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

March 20, 2012

Mr. Michael Melendez  
Associate Regional Administrator  
Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
New York Regional Office  
Division of Medicaid and Children's Health  
26 Federal Plaza - Room 37-100 North  
New York, NY 10278

RE: SPA #11-26  
Non-Institutional Services

Dear Mr. Melendez:

The State requests approval of the enclosed amendment #11-26 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective February 13, 2012 (Appendix I). This amendment is being submitted based on regulation. A summary of the plan amendment is provided in Appendix II.

The State of New York reimburses these services through the use of rates that are consistent with and promote efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area as required by §1902(a)(30) of the Social Security Act and 42 CFR §447.204.

A copy of pertinent sections of State regulation is enclosed for your information (Appendix III). Copies of the public notices of this plan amendment, which were given in the New York State Register on November 23 and November 30, 2011, are also enclosed for your information (Appendix IV). In addition, responses to the five standard funding questions (Appendix V) and evidence of tribal consultation are also enclosed.

If you have any questions regarding this State Plan Amendment submission, please do not hesitate to contact John E. Ulberg, Jr., Medicaid Chief Financial Officer, Division of Rate Setting and Finance, at (518) 474-6350.

Sincerely,



Jason A. Helgerson  
Medicaid Director  
Deputy Commissioner  
Office of Health Insurance Programs

Enclosures

<b>TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL</b>  <b>FOR: HEALTH CARE FINANCING ADMINISTRATION</b>		1. TRANSMITTAL NUMBER: <b>#11-26</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>February 13, 2012</b>	
5. TYPE OF PLAN MATERIAL ( <i>Check One</i> ):  <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT ( <i>Separate Transmittal for each amendment</i> )			
6. FEDERAL STATUTE/REGULATION CITATION: <b>Section 1902(a) of the Social Security Act, and 42 CFR 447</b>		7. FEDERAL BUDGET IMPACT: a. FFY 02/13/12-09/30/12 \$0 b. FFY 10/01/12-09/30/13 \$0	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT:  <b>Attachment 4.19-B: Page 1(p)(iii)</b>		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT ( <i>If Applicable</i> ):	
10. SUBJECT OF AMENDMENT: <b>Assist Preservation of Essential Safety-Net – Non-Institutional (FMAP = 56.88% 4/1/11-6/30/11; 50% 7/1/11 forward)</b>			
11. GOVERNOR'S REVIEW ( <i>Check One</i> ): <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 Corning Tower Empire State Plaza Albany, New York 12237</b>	
13. TYPED NAME: <b>Jason A. Helgerson</b>			
14. TITLE: <b>Medicaid Director &amp; Deputy Commissioner Department of Health</b>			
15. DATE SUBMITTED: <b>March 20, 2012</b>			
<b>FOR REGIONAL OFFICE USE ONLY</b>			
17. DATE RECEIVED:		18. DATE APPROVED:	
<b>PLAN APPROVED – ONE COPY ATTACHED</b>			
19. EFFECTIVE DATE OF APPROVED MATERIAL:		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME:		22. TITLE:	
23. REMARKS:			

**Appendix I**  
**2012 Title XIX State Plan**  
**First Quarter Amendment**  
**Non-Institutional Services**  
**Amended SPA Pages**

**Mergers, acquisitions, consolidations, restructurings, and closures.**

Temporary rate adjustment.

The Commissioner may grant approval of a temporary adjustment to rates calculated pursuant to this section for services provided by Article 28 licensed ambulatory health care providers that are undergoing or impacted by the closure, merger, acquisition, consolidation or restructuring of a health care provider. Providers seeking rate adjustments under this section must submit for approval a written proposal to the Commissioner at least 60 days prior to the requested effective date of the temporary adjustment. The proposal must demonstrate that one or more of the following will be achieved as a result of such additional financial resources:

- Protect or enhance access to care;
- Protect or enhance quality of care;
- Improve the cost effectiveness of the delivery of health care services;
- Otherwise protect or enhance the health care delivery system, as determined by the Commissioner.

Such proposals must provide a budget, details of the need for the adjustment, the purpose and benefits of receiving the adjustment, the timeframes for implementing actions supported by the adjustment, and the deliverables resulting from receipt of the adjustment. Any adjustment issued pursuant to this section will be in accordance with the existing Medicaid rate methodology and will be in effect for a specified period of time, as determined by the Commissioner and based upon the plans identified in the proposal, of up to three years.

The Commissioner will establish, as a condition of receiving the temporary rate adjustment, benchmarks and goals to be achieved in conformity with the provider's approved proposal, and the provider must submit periodic reports, as requested by the Commissioner, concerning the achievement of such benchmarks and goals. Failure to achieve satisfactory progress in accomplishing such benchmarks and goals will be a basis for ending the provider's temporary rate adjustment prior to the end of the specified timeframe. Once a provider's temporary rate adjustment ends, the provider shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and this Attachment.

TN #11-26

Approval Date \_\_\_\_\_

Supersedes TN New

Effective Date \_\_\_\_\_

**Appendix II**  
**2012 Title XIX State Plan**  
**First Quarter Amendment**  
**Non-Institutional Services**  
**Summary**

**SUMMARY**  
**SPA #11-26**

This State Plan Amendment proposes to grant temporary adjustments to Medicaid rates for eligible Article 28 licensed ambulatory care providers that are subject to or impacted by the closure, merger, acquisition, consolidation, or restructuring of a health care provider. The fiscal is budget neutral since the temporary rate adjustment will be funded via the savings to Medicaid expenditures resulting from the restructured service delivery within a particular area or community.

**Appendix III**  
**2012 Title XIX State Plan**  
**First Quarter Amendment**  
**Non-Institutional Services**  
**Authorizing Provisions**

Filed 2/13/12  
Effective 2/13/12  
To be published 2/29/12

Pursuant to the authority vested in the Commissioner of Health by section 2807-(2-a)(e) of the Public Health Law, Subpart 86-8 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulation of the State of New York, is hereby amended by adding a new section 86-8.15, to be effective upon filing with the Secretary of State, as follows:

Subpart 86-8 of title 10 of NYCRR is amended by adding a new section 86-8.15, to read as follows:

86-8.15 Closures, mergers, acquisitions, consolidations, restructurings and inpatient bed de-certifications. (a) The commissioner may grant approval of a temporary adjustment to the non-capital components of rates calculated pursuant to this subpart for eligible ambulatory care facilities licensed under article 28 of the Public Health Law ("PHL").

(b) Eligible facilities shall include:

- (i) facilities undergoing closure;
- (ii) facilities impacted by the closure of other health care facilities;
- (iii) facilities subject to mergers, acquisitions, consolidations or restructuring; or
- (iv) facilities impacted by the merger, acquisition, consolidation or restructuring of other health care facilities.
- (v) outpatient facilities of general hospitals which have entered into an agreement with the Department to permanently decertify a specified number of staffed hospital inpatient beds, as reported to the Department.



(c) Facilities seeking rate adjustments under this section shall demonstrate through submission of a written proposal to the commissioner that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:

- (i) protect or enhance access to care;
- (ii) protect or enhance quality of care;
- (iii) improve the cost effectiveness of the delivery of health care services; or
- (iv) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(d) (i) Such written proposal shall be submitted to the commissioner at least sixty days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal. Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the facility shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and this Subpart. The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the facility's written proposal as approved by the commissioner and may also require that the facility submit such periodic reports concerning the achievement of such benchmarks and goals as the commissioner deems necessary. Failure to achieve satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for

ending the facility's temporary rate adjustment prior to the end of the specified timeframe.

(ii) The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.

(e) Federally qualified health centers with reimbursement rates issued pursuant to PHL § 2807(8) may apply for a temporary rate adjustment pursuant to this section as an alternative rate-setting methodology in accordance with the provisions of PHL § 2807(8)(f).

**Appendix IV  
2012 Title XIX State Plan  
First Quarter Amendment  
Non-Institutional Services  
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](http://www.osc.state.ny.us)

Claims for abandoned property must be filed with the New York State Comptroller's Office of Unclaimed Funds as provided in Section 1406 of the Abandoned Property Law. For further information contact: Office of the State Comptroller, Office of Unclaimed Funds, 110 State St., Albany, NY 12236.

## PUBLIC NOTICE

### Department of Environmental Conservation

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

Notice is hereby given, pursuant to Section 49-0305(9) of the Environmental Conservation Law, of the Department's intent to acquire a Conservation Easement from Adam Hochschild, et al., over certain lands located in the Town of Indian Lake, Hamilton County, New York.

*For further information contact:* Keith Matteson, Superintendent, Bureau of Real Property, Dept. of Environmental Conservation, 625 Broadway, 5th Fl., Albany, NY 12233-4256, (518) 402-9442

## PUBLIC NOTICE

### Department of Health

Pursuant to 42 CFR Section 447.205, the Department of Health hereby gives public notice of the following:

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for inpatient and non-institutional services to comply with enacted State statute. The following significant changes are proposed:

#### Inpatient Services

Effective December 1, 2011, the temporary rate adjustment for general hospital inpatient rates that the commissioner may grant to hospitals undergoing a merger, consolidation or acquisition will be modified and expanded to include a temporary rate adjustment for those general hospitals that are undergoing a closure, merger, consolidation, acquisition, or restructuring, and for those general hospitals that are impacted by the closure, merger, consolidation, acquisition or restructuring of other health care providers. The temporary rate adjustment will apply to inpatient services provided by hospitals certified under Article 28 of the Public Health Law.

Hospitals must submit for approval a written proposal to the Commissioner, at least 60 days prior to the requested effective date of the adjustment, which demonstrates that one or more of the following will be achieved as a result of such additional financial resources:

- Protection or enhancement of access to care;
- Protection or enhancement of quality of care;
- Improvement in the cost effectiveness of the delivery of health care services; or
- Other protections or enhancements to the health care delivery system.

Proposals must also include a budget, details of the need for the adjustment, the purpose and benefits of receiving the adjustment, the timeframes for implementing actions supported by the adjustment, and the deliverables resulting from receipt of the adjustment. Any such adjustment issued will be in effect for a specified period of time, not to exceed three years, after which the hospital will be reimbursed in accordance with the statewide methodology set forth in the State Plan. The Commissioner may establish benchmarks and goals to be achieved, and the hospital must submit periodic reports demonstrating achievement of such. Failure to achieve such benchmarks and goals shall be a basis for ending the hospital's temporary rate adjustment prior to the end of the specified timeframe.

The estimated annual net aggregate change in gross Medicaid expenditures attributable to this change for state fiscal year 2011/2012 is \$0.

#### Non-Institutional Services

Effective December 1, 2011, the commissioner may grant a temporary rate adjustment for certified home health agencies (CHHAs) that are undergoing a closure, merger, consolidation, acquisition, or restructuring, and for those CHHAs that are impacted by the closure, merger, consolidation, acquisition or restructuring of other health care providers. CHHAs must submit for approval a written proposal to the Commissioner, at least 60 days prior to the requested effective date of the adjustment, which demonstrates that one or more of the following will be achieved as a result of such additional financial resources:

- Protection or enhancement of access to care;
- Protection or enhancement of quality of care;
- Improvement in the cost effectiveness of the delivery of health care services; or
- Other protections or enhancements to the health care delivery system.

Proposals must also include a budget, details of the need for the adjustment, the purpose and benefits of receiving the adjustment, the timeframes for implementing actions supported by the adjustment, and the deliverables resulting from receipt of the adjustment. Any such adjustment issued will be in effect for a specified period of time, not to exceed three years, after which the CHHA will be reimbursed in accordance with the statewide methodology set forth in the State Plan. The Commissioner may establish benchmarks and goals to be achieved, and the CHHA must submit periodic reports demonstrating achievement of such. Failure to achieve such benchmarks and goals shall be a basis for ending the CHHA's temporary rate adjustment prior to the end of the specified timeframe.

The estimated annual net aggregate change in gross Medicaid expenditures attributable to this change for state fiscal year 2011/2012 is \$0.

Copies of the proposed state plan amendment will be available for public review on the Department's website at: [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status)

In addition, copies will be on file in each 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

The public is invited to review and comment on this proposed state plan amendment. *For further information or to submit a comment, please contact:* Department of Health, Bureau of HCRA Operations & Financial Analysis, Corning Tower Bldg., Rm. 984, Empire State Plaza, Albany, NY 12237, (518) 474-1673, (518) 473-8825 (FAX), e-mail: [spa\\_inquiries@health.state.ny.us](mailto:spa_inquiries@health.state.ny.us)

**PUBLIC NOTICE**

**Department of Taxation and Finance  
Interest Rates**

The Commissioner of Taxation and Finance hereby sets the interest rates for the months of January, February, March, 2012 pursuant to sections 697(j) and 1096(e) of the Tax Law, as follows:

For purposes of section 697(j) the overpayment rate of interest is set at 2 percent per annum, and the underpayment rate of interest is set at 7-1/2 percent per annum. For purposes of section 1096(e), the overpayment rate of interest is set at 2 percent per annum, and the underpayment rate of interest is set at 7.5 percent per annum. (The underpayment rates set pursuant to sections 697(j) and 1096(e) may not be less than 7-1/2 percent per annum.) Pursuant to section 1145(a)(1) of the Tax Law, the underpayment rate for State and local sales and use taxes administered by the Commissioner of Taxation and Finance is 14-1/2 percent per annum. The underpayment rate for the special assessments on hazardous waste imposed by section 27-0923 of the Environmental Conservation Law is 15 percent.

For the interest rates applicable to overpayments (refunds) and underpayments (late payments and assessments) of the following taxes administered by the Commissioner of Taxation and Finance for the period January 1, 2012 through March 31, 2012, see the table below:

1/1/12 - 3/31/12  
Interest Rate Per  
Annum  
Compounded Daily

Commonly viewed tax types	Refunds	Late Payments & Assessments
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Income **	2%	7.5%
Sales and use	2%	14.5% *
Withholding	2%	7.5%
Corporation **	2%	7.5%
<b>All other tax types</b>	<b>Refunds</b>	<b>Late Payments &amp; Assessments</b>
Alcoholic Beverage	2%	7.5%
Beverage Container Deposits	2%	7.5%
Boxing & Wrestling	2%	7.5%
Cigarette	NA	7.5%
Diesel Motor Fuel	2%	7.5%
Estate	2%	7.5%
Fuel Use Tax	12%	12%
Generation-Skipping Transfer	2%	7.5%
Hazardous Waste	2%	15%
Highway Use	2%	7.5%
Metropolitan Commuter Transportation Medallion Taxicab Ride	2%	7.5%
Metropolitan Commuter Transportation Mobility Tax	2%	7.5%
Mortgage Recording	2%	7.5%
Motor Fuel	2%	7.5%
Petroleum Business	2%	7.5%
Real Estate Transfer	2%	7.5%
Tobacco Products	NA	7.5%
Waste Tire Fee	2%	7.5%

\* The Tax Law requires the interest rate on sales tax assessments or late payments to be set at 14-1/2% for this quarter. However, if the Commissioner determines that the failure to pay or the delay in payment is due to reasonable cause and not willful neglect, the Commissioner may impose interest at the corporation tax late payment and assessment rate. That rate is 7.5% for this quarter.

\*\* There are a number of state and local governmental bodies that have interest rates tied to the overpayment and underpayment rates contained in either section 697(j) (Income Tax) or section 1096(e) (Corporation Tax) of the Tax Law. For purposes of section 697(j) and section 1096(e) of the Tax Law, the overpayment rate for this period is 2%. For purposes of section 697(j) of the Tax Law, the underpayment rate for this period is 7.5%. For purposes of section 1096(e) of the Tax Law, the underpayment rate for this period is also 7.5%.

*For further information contact:* John W. Bartlett, Taxpayer Guidance Division, Department of Taxation and Finance, W. A. Harriman Campus, Albany, NY 12227, (518) 457-2554

For rates for previous periods, visit the Department of Taxation and Finance website: [www.tax.ny.gov/taxnews/int\\_curr.htm](http://www.tax.ny.gov/taxnews/int_curr.htm)

**SALE OF  
FOREST PRODUCTS  
Jefferson Reforestation Area No.7  
Contract No. X008461**

Pursuant to Section 9-0505 of the Environmental Conservation Law, the Department of Environmental Conservation hereby gives Public Notice of the following:

Sealed bids for red pine - 209.0 MBF more or less, white pine - 0.4 MBF more or less, white ash - 1.6 MBF more or less, black cherry - 0.5 MBF more or less, red maple - 0.3 MBF more or less, hard maple - 0.07 MBF more or less, pine pulp - 583.0 cords more or less, firewood - 88.0 cords more or less, located on Jefferson Reforestation Area No. 7, Goulds Corners State Forest, Stands A-2 and A-3, will be accepted at the Department of Environmental Conservation, Contract Unit, 625 Broadway, 10th Fl., Albany, NY 12233-5027 until 11:00 a.m., Thursday, Dec. 1, 2011.

*For further information, contact:* Edwin Sykes, Senior Forester, Department of Environmental Conservation, Division of Lands and Forests, Region 6, 7327 State Rte. 812, Lowville, NY 13367, (315) 376-3521

13. Project Sponsor and Facility: EXCO Resources (PA), LLC (Muncy Creek – McClintock), Penn Township, Lycoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

14. Project Sponsor: Glenn O. Hawbaker, Inc. Project Facility: Greens Landing Aggregate Plant, Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.249 mgd.

15. Project Sponsor: Glenn O. Hawbaker, Inc. Project Facility: Greens Landing Aggregate Plant, Athens Township, Bradford County, Pa. Application for consumptive water use of up to 0.249 mgd.

16. Project Sponsor: Hazleton Creek Properties, LLC. Project Facility: Hazleton Mine Reclamation, Hazleton City, Luzerne County, Pa. Modification to increase groundwater withdrawal by an additional 0.145 mgd, for a total of 0.200 mgd (30-day average) (Docket No. 20110307).

17. Project Sponsor and Facility: Keystone Clearwater Solutions, LLC (Babb Creek), Morris Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.950 mgd.

18. Project Sponsor and Facility: Stanley S. Karp Sr. (Tunkhannock Creek), Nicholson Borough, Wyoming County, Pa. Application for surface water withdrawal of up to 0.510 mgd.

19. Project Sponsor and Facility: Sugar Hollow Trout Park and Hatchery, Eaton Township, Wyoming County, Pa. Modification to project features and conditions of the groundwater withdrawal approval (Docket No. 20100913).

20. Project Sponsor and Facility: Sugar Hollow Water Services, LLC (Susquehanna River – Chellis), Eaton Township, Wyoming County, Pa. Application for surface water withdrawal of up to 1.500 mgd.

21. Project Sponsor: The Municipal Authority of the Borough of Berlin. Project Facility: Berlin Borough Municipal Authority, Allegheny Township, Somerset County, Pa. Modification to conditions of the groundwater withdrawal approval (Docket No. 19980702).

22. Project Sponsor and Facility: Walker Township Water Association, Walker Township, Centre County, Pa. Modification to increase the total groundwater system withdrawal limit from 0.523 mgd to 0.753 mgd (30-day average) (Docket No. 20070905).

23. Project Sponsor and Facility: Williams Production Appalachia, LLC (Middle Branch Wyalusing Creek), Forest Lake Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.750 mgd.

24. Project Sponsor and Facility: Williams Production Appalachia, LLC (Snake Creek-2), Franklin Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

25. Project Sponsor and Facility: Williams Production Appalachia, LLC (Susquehanna River), Great Bend Township, Susquehanna County, Pa. Commission-initiated modification to project features and conditions of the surface water withdrawal approval (Docket No. 20090303), making a correction and reducing the approved surface water withdrawal amount from 3.00 mgd to 1.00 mgd.

26. Project Sponsor and Facility: Williams Production Appalachia, LLC (Susquehanna River-2), Great Bend Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

#### Opportunity to Appear and Comment:

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102-2391, or submitted electronically to Richard A. Cairo, General Counsel, e-mail: rcairo@srbc.net or Stephanie L. Richardson, Secretary to the Commission, e-mail: srichardson@srbc.net. Comments mailed or electronically submitted must be received prior to December 9, 2011, to be considered.

AUTHORITY: Public Law 91-575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: November 10, 2011.

Thomas W. Beauduy  
Deputy Executive Director.

## PUBLIC NOTICE

### Division of Criminal Justice Services Juvenile Justice Advisory Group

Pursuant to Public Officer Law § 104, the Division of Criminal Justice Services gives notice of a meeting of the New York State Juvenile Justice Advisory Group:

Date: Dec. 13, 2011

Time: 10:30 p.m. - 2:30 p.m.

Place: Division of Criminal Justice Services

Four Tower Place, 1st Fl.

Albany, NY 12203-3764

Video Conference with: Executive Chamber, 633 Third Ave., 37 Fl. Board Rm.

For further information contact: Schellie Tedesco, Secretary to Jacquelyn Greene, Esq., Juvenile Justice Policy and Program Unit, Division of Criminal Justice Services, Four Tower Place, 3rd Fl., Albany, NY 12203, Schellie.tedesco@dcjs.state.nys.us, (518) 457-3670, Fax: (518) 485-0909

## 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 non-institutional and long-term care services to comply with enacted State statute. The following significant changes are proposed:

#### Non-Institutional Services

Effective December 1, 2011, the Commissioner may grant approval for a temporary adjustment to rates for eligible ambulatory care providers licensed under Article 28 of the Public Health Law (PHL). Eligible ambulatory care providers include those undergoing closure; those impacted by the closure of other health care providers; those subject to merger, acquisition, consolidation or restructuring; those impacted by the merger, acquisition, consolidation or restructuring of other health care providers; and outpatient departments of general hospitals that have entered into an agreement with the Department to permanently decertify a specified number of staffed hospital inpatient beds. Providers must submit for approval a written proposal to the Commissioner, at least 60 days prior to the requested effective date of the adjustment, which demonstrates that one or more of the following will be achieved as a result of such additional financial resources:

- Protect or enhance access to care;
- Protect or enhance quality of care;
- Improve the cost effectiveness of the delivery of health care services; or
- Otherwise protect or enhance the health care delivery system, as determined by the Commissioner.

Proposals must also include a budget, details of the need for the adjustment, the purpose and benefits of receiving the adjustment, the timeframes for implementing actions supported by the adjustment, and the deliverables resulting from receipt of the adjustment. Any such adjustment issued will be in effect for a specified period of time, not to exceed three years, after which the provider will be reimbursed in accordance with the statewide methodology set forth in the State Plan. The Commissioner may establish benchmarks and goals to be achieved, and the provider must submit periodic reports demonstrating achievement of such. Failure to achieve such benchmarks and goals shall be a basis for ending the provider's temporary rate adjustment prior to the end of the specified timeframe.

Federally qualified health centers with reimbursement rates issued pursuant to PHL § 2807(8) may apply for a temporary rate adjustment as an alternative rate-setting methodology in accordance with the provisions of PHL § 2807(8)(f).

There is no estimated annual net aggregate change in gross Medicaid expenditures as a result of this proposed initiative for state fiscal year 2012/2013.

Long-Term Care Services

Effective December 1, 2011, the Commissioner may grant approval for a temporary adjustment to rates for eligible residential health care facilities. Eligible residential health care facilities include those undergoing closure; those impacted by the closure of other health care providers; those subject to merger, acquisition, consolidation or restructuring; and those impacted by the merger, acquisition, consolidation or restructuring of other health care providers. Facilities must submit for approval a written proposal to the Commissioner, at least 60 days prior to the requested effective date of the adjustment, which demonstrates that one or more of the following will be achieved as a result of such additional financial resources:

- Protect or enhance access to care;
- Protect or enhance quality of care;
- Improve the cost effectiveness of the delivery of health care services; or
- Otherwise protect or enhance the health care delivery system, as determined by the Commissioner.

Proposals must also include a budget, details of the need for the adjustment, the purpose and benefits of receiving the adjustment, the timeframes for implementing actions supported by the adjustment, and the deliverables resulting from receipt of the adjustment. Any such adjustment issued will be in effect for a specified period of time, not to exceed three years, after which the facility will be reimbursed in accordance with the statewide methodology set forth in the State Plan. The Commissioner may establish benchmarks and goals to be achieved, and the facility must submit periodic reports demonstrating achievement of such. Failure to achieve such benchmarks and goals shall be a basis for ending the facility's temporary rate adjustment prior to the end of the specified timeframe.

There is no estimated annual net aggregate change in gross Medicaid expenditures as a result of this proposed initiative for state fiscal year 2012/2013.

Copies of the proposed state plan amendments will be available for public review on the Department's website at: [http://www.health.ny.gov/regulations/state\\_plans/status](http://www.health.ny.gov/regulations/state_plans/status)

In addition, copies will be on file in each 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

The public is invited to review and comment on these proposed state plan amendments. For further information or to submit a com-

ment, please contact: Department of Health, Bureau of HCRA Operations & Financial Analysis, Corning Tower Bldg., Rm. 984, Empire State Plaza, Albany, NY 12237, (518) 474-1673, (518) 473-8825 (FAX), [spa\\_inquiries@health.state.ny.us](mailto:spa_inquiries@health.state.ny.us)

PUBLIC NOTICE

Office for People with Developmental Disabilities and Department of Health

Pursuant to 42 CFR Section 447.205, the New York State Office for People With Developmental Disabilities (OPWDD) and the New York State Department of Health hereby give notice of the following:

The State proposes to expand Community Habilitation Services authorized by OPWDD. New York State is seeking to implement a new service, Monthly Community Habilitation (MCH) and will establish methods and standards for setting payment rates for MCH.

MCH will have a monthly billing structure. Price setting for the new monthly service will be based on a combination of the provider's IRA price and its group day habilitation price in effect on December 31, 2011. OPWDD will sum the non-room and board component of the individual monthly price derived from the IRA price sheet in effect on December 31, 2011 and the individual monthly price derived from the total approved costs in the group day habilitation price sheet in effect on December 31, 2011. The result will be the non-room and board component of the individual MCH price. The room and board component of the MCH price will be the room and board component of the individual monthly price from the IRA price sheet in effect on December 31, 2011. OPWDD will sum the non-room and board component and the room and board component to yield the individual MCH price. Subsequent MCH prices will be revised if the IRA price or the group day habilitation price used to calculate the individual MCH price is revised. The proposed changes will become effective January 1, 2012. The new methodology will apply to services delivered on or after that date.

The reasons for the proposed changes are to expand eligibility for community habilitation to individuals who reside in supervised residential habilitation settings certified by OPWDD and who are enrolled in the HCBS waiver, and to offer another option to individuals who wish to have their habilitation services focus on a variety of everyday community settings. MCH promises enhanced flexibility and a more individualized approach and will offer increased flexibility in service design, encourage increased community interaction.

The State estimates that there will be no increase or decrease in annual aggregate expenditures as a result of this change.

Texts of regulations describing the proposed changes have been distributed to the offices of the local (county) Mental Hygiene Directors and are available for public review. To determine the location of your local Mental Hygiene Director including the office within Manhattan (New York County), you may access a list online at <http://clmhd.org/about/countydirectory.aspx>.

In New York City, the text of the proposed regulations will be available at the following Developmental Disabilities Services Office locations:

Metro New York DDSO  
75 Morton Street  
New York, New York 10014

Bernard M. Fineson DDSO  
80-45 Winchester Blvd.  
Administration Building 80-00  
Queens Village, New York 11427

Brooklyn DDSO  
888 Fountain Avenue  
Brooklyn, New York 11208

Metro New York DDSO  
2400 Halsey Street  
Bronx, New York 10461

**Appendix V**  
**2012 Title XIX State Plan**  
**First Quarter Amendment**  
**Non-Institutional Services**  
**Responses to Standard Funding Questions**



**NON-INSTITUTIONAL SERVICES**  
**State Plan Amendment #11-26**

**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-B of this SPA. For SPAs that provide for changes to payments for clinic or outpatient hospital services or for enhanced or supplemental payments to physician or other practitioners, the questions must be answered for all payments made under the state plan for such service.

- 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 do retain the payments made pursuant to this amendment. However, this requirement in no way prohibits the public provider, including county providers, from reimbursing the sponsoring local government for appropriate expenses incurred by the local government on behalf of the public provider. The State does not regulate the financial relationships that exist between public health care providers and their sponsoring governments, which are extremely varied and complex. Local governments may provide direct and/or indirect monetary subsidies to their public providers to cover on-going unreimbursed operational expenses and assure achievement of their mission as primary safety net providers. Examples of appropriate expenses may include payments to the local government which include reimbursement for debt service paid on a provider's behalf, reimbursement for Medicare Part B premiums paid for a provider's retirees, reimbursement for contractually required health benefit fund payments made on a provider's behalf, and payment for overhead expenses as allocated per federal Office of Management and Budget Circular A-87 regarding Cost Principles for State, Local, and Indian Tribal Governments. The existence of such transfers should in no way negate the legitimacy of these facilities' Medicaid payments or result in reduced Medicaid federal financial participation for the State. This position was further supported by CMS in review and approval of SPA 07-07C when an on-site audit of these transactions for New

York City's Health and Hospitals Corporation was completed with satisfactory results.

- 2. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Note that, if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either 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:**

Payments made to service providers under the provisions of this SPA are funded through a general appropriation received by the State agency that oversees medical assistance (Medicaid), which is the Department of Health. The source of the appropriation is the Local Assistance Account under the General Fund/Aid to Localities.

- 3. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.**

**Response:** The payments authorized for this provision are not supplemental or enhanced payments.

- 4. For clinic or outpatient hospital services 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.**

**Response:** Based on guidance from CMS, the State and CMS staff will engage in discussions to develop a strategic plan to complete the applicable UPL demonstration for 2012.

- 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:** The rate methodology included in the State Plan for hospital outpatient services is either cost-based subject to ceilings or based upon the Ambulatory Patient Group (APG) system. We are unaware of any requirement under current federal law or regulation that limits individual providers' payments to their actual costs.

### **ACA Assurances:**

- 1. Maintenance of Effort (MOE). Under section 1902(gg) of the Social Security Act (the Act), as amended by the Affordable Care Act, as a condition of receiving any Federal payments under the Medicaid program during the MOE period indicated below, the State shall not have in effect any eligibility standards, methodologies, or procedures in its Medicaid program which are more restrictive than such eligibility provisions as in effect in its Medicaid program on March 10, 2010.**

#### **MOE Period.**

- **Begins on: March 10, 2010, and**
- **Ends on: The date the Secretary of the Federal Department of Health and Human Services determines an Exchange established by a State under the provisions of section 1311 of the Affordable Care Act is fully operational.**

**Response:** This SPA complies with the conditions of the MOE provision of section 1902(gg) of the Act for continued funding under the Medicaid program.

2. Section 1905(y) and (z) of the Act provides for increased FMAPs for expenditures made on or after January 1, 2014 for individuals determined eligible under section 1902(a)(10)(A)(i)(VIII) of the Act. Under section 1905(cc) of the Act, the increased FMAP under sections 1905(y) and (z) would not be available for States that require local political subdivisions to contribute amounts toward the non-Federal share of the State's expenditures at a greater percentage than would have been required on December 31, 2009.

Prior to January 1, 2014 States may potentially require contributions by local political subdivisions toward the non-Federal share of the States' expenditures at percentages greater than were required on December 31, 2009. However, because of the provisions of section 1905(cc) of the Act, it is important to determine and document/flag any SPAs/State plans which have such greater percentages prior to the January 1, 2014 date in order to anticipate potential violations and/or appropriate corrective actions by the States and the Federal government.

Response: This SPA would [ ] / would not [XX] 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: This SPA does comply with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.

Tribal Assurance:

Section 1902(a)(73) of the Social Security Act the Act requires a State in which one or more Indian Health Programs or Urban Indian Organizations furnish health care services to establish a process for the State Medicaid agency to seek advice on a regular ongoing basis from designees of Indian health programs whether operated by the Indian Health Service HIS Tribes or Tribal organizations under the Indian Self Determination and Education Assistance Act ISDEAA or Urban Indian Organizations under the Indian Health Care Improvement Act.

IHCIA Section 2107(e)(l) 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:** The consultation process that New York State uses is detailed in SPA #11-06, which was approved by CMS on 8/4/11. On 4/29/11, and again on 6/28/11, tribal leaders and health clinic administrators were sent information regarding this SPA (see attached) in accordance with the State's approved procedure. To date, no comments have been received.