NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

September 30, 2013

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 Operations
26 Federal Plaza - Room 37-100 North
New York, New York 10278

RE: SPA #13-23
Non-Institutional Services

Dear Mr. Melendez:

The State requests approval of the enclosed amendment #13-23 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective July 1, 2013 (Appendix I). This amendment is being submitted based on existing legislation. A summary of the 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 State 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.

Copies of pertinent sections of existing State statute are enclosed for your information (Appendix III). A copy of the public notice of this plan amendment, which was given in the New York State Register on September 26, 2012, is also enclosed for your information (Appendix IV). In addition, responses to the standard access questions, which include Affordable Care Act (ACA) and tribal assurances, are also enclosed (Appendix V).

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

Sincerely,

Jason A. Helgerson
Medicaid Director
Office of Health Insurance Programs

Enclosures

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: HEALTH CARE FINANCING ADMINISTRATION	1. TRANSMITTAL NUMBER: **13-23**	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 **July 1, 2013**	

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(a) of the Social Security Act**	7. FEDERAL BUDGET IMPACT: **a. FFY 07/01/13-09/30/13 $ 195,182** **b. FFY 10/01/13-09/30/14 $ (1,647,221)**
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: **Attachment 3.1-D: Pages 2, 3, 4**	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*: **Attachment 3.1-D: Pages 2, 3**

10. SUBJECT OF AMENDMENT:
Medicaid Transportation Management
(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:	16. RETURN TO: **New York State Department of Health** **Bureau of Federal Relations & Provider Assessments** **99 Washington Ave – One Commerce Plaza** **Suite 1430** **Albany, NY 12210**
13. TYPED NAME: **Jason A. Helgerson**	
14. TITLE: **Medicaid Director** **Department of Health**	
15. DATE SUBMITTED: September 30, 2013	

FOR REGIONAL OFFICE USE ONLY

17. DATE RECEIVED:	18. DATE APPROVED:
PLAN APPROVED – ONE COPY ATTACHED	
19. EFFECTIVE DATE OF APPROVED MATERIAL:	20. SIGNATURE OF REGIONAL OFFICIAL:
21. TYPED NAME:	22. TITLE:

23. REMARKS:

Appendix I
2013 Title XIX State Plan
Third Quarter Amendment
Non-Institutional Services
Amended SPA Pages

d. the geographic locations of the MA recipient and the provider of medical care and services;

e. the medical care and services available within the common medical marketing area of the MA recipient's community;

f. the need to continue a regimen of medical care or service with a specific provider; and,

g. any other circumstances which are unique to a particular MA recipient and which the prior authorization official determines have an effect on the need for payment of transportation services.

The decision to require the MA recipient to travel using a personal vehicle, public transit, or taxi is made by the prior authorization official based upon the prior authorization official's knowledge of personal vehicle ownership and the local public transit routes. When a more specialized mode of transportation is required, such as wheelchair or stretcher van, or ambulance, the prior authorization official will make a decision on the proper mode of transport after consideration of information obtained from a medical practitioner, supervisors, the Department, program guidance materials, and any other source available, that will help the official to make a reasoned decision.

B. Payment

1. Criteria to be used when establishing payment for medical assistance transportation:

a. Social services districts, except those where the Commissioner of Health has assumed the management of transportation [management] services, have the authority to establish payment rates with vendors of transportation services which will ensure the efficient provision of appropriate transportation for MA recipients in order for the recipients to obtain necessary medical care or services. Social services districts may establish such rates in a number of ways, which may include negotiation with the vendors. However, no established rate will be reimbursed unless that rate has been approved by the Department as the Department established rate.

i. The State defines "department established rate" as the rate for any given mode of transportation which the department has determined will ensure the efficient provision of appropriate transportation to MA recipients in order for the recipients to obtain necessary medical care and services.
ii. The department may either establish rate schedules at which transportation services can be assured or delegate such authority to the social services districts. Delegation of authority exists only in episodic circumstances in which immediate transportation is needed at a cost not considered in the established fee schedule. In order to ensure access to needed medical care and service, the social services districts will approve a rate to satisfy the immediate need.
iii. Plans, rate schedules or amendments may not be implemented without departmental approval.
iv. Social services districts have no authority to establish a fee schedule without the Department's involvement; there is no incongruity between the Department's and social services district's fee schedules.

v. Payment for reimbursement of the MA recipient's use of a personal vehicle will be made at the Internal Revenue Service's established rate for *Medical Mileage*. Payment of reimbursement for use of a personal vehicle of a volunteer driver or family mem[e]ber of a MA recipient will be made at the Internal Revenue Service's established rate for *Standard Mileage.*

b. Payment for transportation is only available for transportation to and from providers of necessary medical care and services which can be paid for under the MA program. MA payment for transportation will not be made if the care or services are not covered under the MA program.

c. MA payment to vendors of transportation services is limited to situations where an MA recipient is actually being transported in the vehicle.

d. MA payment will not generally be made for transportation which is ordinarily made available to other persons in the community without charge. If federal financial participation is available for the costs of such transportation, the MA program is permitted to pay for the transportation.

e. Vendors of transportation services must provide pertinent cost data to a social services district upon request or risk termination from participation in the MA program.

Finally, the provisions require social services districts, except those where the Commissioner of Health assumed management of transportation services, to notify applicants for and recipients of MA of the procedures for obtaining prior authorization of transportation services.

C. Transportation Management

The following table depicts, for each county, whether the county department of social services or State manages the transportation program.

Managed by Local Department of Social Services		**Managed by Department of Health Under Contract**	
Allegany	Monroe	Albany	Queens
Cattaraugus	Nassau	Bronx	Rensselaer
Chautauqua	Niagara	Broome	Richmond
Chemung	Ontario	Cayuga	Rockland
Chenango	Orleans	Columbia	Saratoga
Clinton	Oswego	Delaware	Schenectady
Cortland	Otsego	Dutchess	Schoharie
Erie	Schuyler	Essex	Sullivan
Franklin	Seneca	Fulton	Ulster
Genesee	St. Lawrence	Greene	Warren
Hamilton	Steuben	Kings	Washington
Herkimer	Suffolk	Montgomery	Westchester
Jefferson	Tioga	New York	
Lewis	Tompkins	Oneida	
Livingston	Wayne	Onondaga	
Madison	Wyoming	Orange	
Suffolk	Yates	Putnam	

New York
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Managed by Local Department of Social Services	Managed by Department of Health Under Contract		
Allegany	Albany	Kings	Rockland
Cattaraugus	Bronx	Lewis	Saratoga
Chautauqua	Broome	Livingston	Schenectady
Erie	Cayuga	Madison	Schoharie
Genesee	Chemung	Monroe	Schuyler
Nassau	Chenango	Montgomery	Seneca
Niagara	Clinton	New York	Steuben
Suffolk	Columbia	Oneida	St. Lawrence
Wyoming	Cortland	Onondaga	Sullivan
	Delaware	Ontario	Tioga
	Dutchess	Orange	Tompkins
	Essex	Orleans	Ulster
	Franklin	Oswego	Warren
	Fulton	Otsego	Washington
	Greene	Putnam	Wayne
	Hamilton	Queens	Westchester
	Herkimer	Rensselaer	Yates
	Jefferson	Richmond	

Appendix II
2013 Title XIX State Plan
Third Quarter Amendment
Non-Institutional Services
Summary

SUMMARY
SPA #13-23

This State Plan Amendment proposes to move twenty-four counties under Department of Social Services control to State control for Medicaid Transportation Management.

Appendix III
2013 Title XIX State Plan
Third Quarter Amendment
Non-Institutional Services
Authorizing Provisions

SPA 13-23

CHAPTER 109 OF THE LAWS OF 2010 - S.8090/A.11372

§ 20. Section 365-h of the social services law, as added by chapter 81 of the laws of 1995 and subdivision 3 as amended by section 26 of part B of chapter 1 of the laws of 2002, is amended to read as follows:

§ 365-h. Provision and reimbursement of transportation costs. 1. The local social services official and, subject to the provisions of subdivision four of this section, the commissioner of health shall have responsibility for prior authorizing transportation of eligible persons and for limiting the provision of such transportation to those recipients and circumstances where such transportation is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title.

2. In exercising this responsibility, the local social services official and, as appropriate, the commissioner of health shall:

(a) make appropriate and economical use of transportation resources available in the district in meeting the anticipated demand for transportation within the district, including, but not limited to: transportation generally available free-of-charge to the general public or specific segments of the general public, public transportation, promotion of group rides, county vehicles, coordinated transportation, and direct purchase of services; and

(b) maintain quality assurance mechanisms in order to ensure that (i) only such transportation as is essential, medically necessary and appropriate to obtain medical care, services or supplies otherwise available under this title is provided [~~and~~]; (ii) no expenditures for taxi or livery transportation are made when public transportation or lower cost transportation is reasonably available to eligible persons; and (iii) transportation services are provided in a safe, timely, and reliable manner by providers that comply with state and local regulatory requirements and meet consumer satisfaction criteria approved by the commissioner of health.

3. In the event that coordination or other such cost savings measures are implemented, the commissioner shall assure compliance with applicable standards governing the safety and quality of transportation of the population served.

4. The commissioner of health is authorized to assume responsibility from a local social services official for the provision and reimbursement of transportation costs under this section. If the commissioner elects to assume such responsibility, the commissioner shall notify the local social services official in writing as to the election, the date upon which the election shall be effective and such information as to transition of responsibilities as the commissioner deems prudent. The commissioner is authorized to contract with a transportation manager or managers to manage transportation services in any local social services district. Any transportation manager or managers selected by the commissioner to manage transportation services shall have proven experience in coordinating transportation services in a geographic and demographic area similar to the area in New York state within which the contractor would manage the provision of services under this section. Such a contract or contracts may include responsibility for: review, approval and processing of transportation orders; management of the appropriate level of transportation based on documented patient medical need; and development of new technologies leading to efficient transportation services. If the commissioner elects to assume such responsibility from

a local social services district, the commissioner shall examine and, if appropriate, adopt quality assurance measures that may include, but are not limited to, global positioning tracking system reporting requirements and service verification mechanisms. Any and all reimbursement rates developed by transportation managers under this subdivision shall be subject to the review and approval of the commissioner. Notwithstanding any inconsistent provision of sections one hundred twelve and one hundred sixty-three of the state finance law, or section one hundred forty-two of the economic development law, or any other law, the commissioner is authorized to enter into a contract or contracts under this subdivision without a competitive bid or request for proposal process, provided, however, that:

(a) the department shall post on its website, for a period of no less than thirty days:

(i) a description of the proposed services to be provided pursuant to the contract or contracts;

(ii) the criteria for selection of a contractor or contractors;

(iii) the period of time during which a prospective contractor may seek selection, which shall be no less than thirty days after such information is first posted on the website; and

(iv) the manner by which a prospective contractor may seek such selection, which may include submission by electronic means;

(b) all reasonable and responsive submissions that are received from prospective contractors in timely fashion shall be reviewed by the commissioner; and

(c) the commissioner shall select such contractor or contractors that, in his or her discretion, are best suited to serve the purposes of this section.

Appendix IV
2013 Title XIX State Plan
Third Quarter Amendment
Non-Institutional Services
Public Notice

Plan Amendment. *For further information or to submit a comment, please contact*: Department of Health, Bureau of HCRA Operations & Financial Analysis, 99 Washington Ave. - One Commerce Plaza, Suite 810, Albany, NY 12210, (518) 474-1673, (518) 473-8825 (FAX), e-mail: spa_inquiries@health.state.ny.us

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 services to comply with enacted statutory provisions. The following changes are proposed for Medicaid transportation services:

Non-Institutional Services

Effective on and after October 1, 2012, the Commissioner of Health is authorized to assume the responsibility of managing transportation services from any county local Department of Social Services. By assuming this responsibility, the Commissioner may choose to contract with a transportation manager or managers to manage such transportation services in any county local Department of Social Services.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2012/2013 is $13.7 million.

The public is invited to review and comment on this proposed state plan amendment. Copies of which will be available for public review on the Department's website at:http://www.health.ny.gov/regulations/state_plans/status

In addition, copies of the proposed state plan amendments will be on file and available for public review 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

For further information and to review and comment, please contact: Department of Health, Bureau of HCRA Operations & Financial Analysis, 99 Washington Ave. - One Commerce Plaza, Suite 810, Albany, NY 12210, (518) 474-1673, (518) 473-8825 (FAX), e-mail: spa_inquiries@health.state.ny.us

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 services to revise provisions of the Ambulatory Patient Group (APG) reimbursement methodology on or after October 1, 2012:

The Ambulatory Patient Group (APG) reimbursement methodology is revised to include recalculated weights that will become effective on or after October 1, 2012. There is no estimated annual change to gross Medicaid expenditures as a result of this proposal.

The public is invited to review and comment on this proposed state plan amendment, which will be available for public review on the Department's website athttp://www.health.ny.gov/regulations/state_plans/status

Copies of the proposed state plan amendment will also be on file in each local (county) social services district and available for public review.

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New York County
250 Church Street
New York, New York 10018

Queens County, Queens Center
3220 Northern Boulevard
Long Island City, New York 11101

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95 Central Avenue, St. George
Staten Island, New York 10301

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Copies of the proposed state plan amendment will also be on file in each local (county) social services district and available for public review.

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

Appendix V
2013 Title XIX State Plan
Third Quarter Amendment
Non-Institutional Services
Responses to Standard Access Questions

APPENDIX V
NON-INSTITUTIONAL SERVICES
State Plan Amendment #13-23

CMS Standard Access Questions & Assurances

The following questions have been asked by CMS and are answered by the State in relation to all payments made to all providers under Attachment 4.19-B of the state plan.

1. **Specifically, how did the State determine that the Medicaid provider payments that will result from the change in this amendment are sufficient to comply with the requirements of 1902(a)(30)?**

   Response: Under SPA #12-33, the Commissioner of Health is authorized to assume the responsibility of managing transportation services from any county local department of social services and, in such case, may choose to contract with a transportation manager or managers to oversee transportation services in any county local department of social services. There is no change to the Department's method of determining Medicaid provider payments.

   This authority was provided to the Commissioner of Health by Article VII language, Chapter 109 of the Laws of 2010, amending Section 365-h of the Social Service Law. The resulting State Medicaid transportation management initiatives, including New York City and the Hudson Valley region, are Medicaid Redesign Team proposals.

   The Commissioner's authority to contract for professional management of Medicaid transportation will be used to improve the delivery of this crucial service, and better align the State's fiscal and program accountability. This authority will be exercised in close collaboration and consultation with local social services and county officials in a manner that ensures compliance with both State and local regulations, and consumer satisfaction standards. Furthermore, the assumption of transportation management by the State represents significant mandate relief for localities by shifting the responsibility for administering Medicaid transportation to a contractor operating under the direction of the Department of Health.

   Contractors hired by the Department through the use of the Commissioner's authority manage the fee-for-service Medicaid transportation and do not contract with transportation providers. Also, there is no resulting change to the Department's the transportation provider reimbursement methodology or the fee approval process.

2. **How does the State intend to monitor the impact of the new rates and implement a remedy should rates be insufficient to guarantee required access levels?**

   Response: The State has various ways to ensure that access levels in the Medicaid program are retained and is currently not aware of any access issues, particularly since there is excess bed capacity for both hospitals and nursing homes. Additionally, hospital and nursing home providers must notify and receive approval from the Department's Office of Health Systems Management (OHSM) in order to discontinue services. This Office monitors and considers such requests in the context of access as they approve/deny changes in services. Finally, providers cannot discriminate based on source of payment.

   For providers that are not subject to an approval process, the State will continue to monitor provider complaint hotlines to identify geographic areas of concern and/or service type needs. If Medicaid beneficiaries begin to encounter access issues, the Department would expect to see a marked increase in complaints. These complaints will be identified and analyzed in light of the changes proposed in this State Plan Amendment.

   Finally, the State ensures that there is sufficient provider capacity for Medicaid Managed Care plans as part of its process to approve managed care rates and plans. Should sufficient access to services be compromised, the State would be alerted and would take appropriate action to ensure retention of access to such services.

3. **How were providers, advocates and beneficiaries engaged in the discussion around rate modifications? What were their concerns and how did the State address these concerns?**

   Response: This change was enacted by the State Legislature as part of the negotiation of the 2010-11 Budget. The impact of this change was weighed in the context of the overall Budget in the State. The legislative process provides opportunities for all stakeholders to lobby their concerns, objections, or support for various legislative initiatives.

4. **What action(s) does the State plan to implement after the rate change takes place to counter any decrease to access if the rate decrease is found to prevent sufficient access to care?**

   Response: Should any essential community provider experience Medicaid or other revenue issues that would prevent access to needed community services, per usual practice, the State would meet with them to explore the situation and discuss possible solutions, if necessary.

5. **Is the State modifying anything else in the State Plan which will counterbalance any impact on access that may be caused by the decrease in rates (e.g. increasing scope of services that other provider types may provide or providing care in other settings)?**

   Response: Over the course of the past three years, the State has undertaken a massive reform initiative to better align reimbursement with care. When fully implemented, the initiative will invest over $600 million in the State's ambulatory care system (outpatient, ambulatory surgery, emergency department, clinic and physicians) to incentivize care in the most appropriate setting. The State has also increased its physician reimbursement schedule to resemble Medicare payments for similar services, thus ensuring continued access for Medicaid beneficiaries. Further, the State is implementing initiatives that will award $600 million annually, over five years, to providers who promote efficiency and quality care through the Federal-State Health Reform Partnership(F-SHRP)/ NYS Healthcare Efficiency and Affordability Law (HEAL). While some of these initiatives are outside the scope of the State Plan, they represent some of the measures the State is taking to ensure quality care for the State's most vulnerable population.

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: 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)(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: The process that New York State uses is detailed in SPA #11-06, which was approved by CMS on 8/4/11. The tribal leaders were sent information regarding the SPA via postal mail, and the health clinic administrators were emailed the same information. Copies of tribal consultation are enclosed.