NEW YORK STATE OF OPPORTUNITY. Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

June 29, 2021

James G. Scott, Director
Division of Program Operations
Centers for Medicare & Medicaid Services
601 E. 12th St., Room 355
Kansas City, Missouri 64106

RE: SPA #21-0015
Non-Institutional Services

Dear Mr. Scott:

The State requests approval of the enclosed amendment #21-0015 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective April 1, 2021 (Appendix I). This amendment is being submitted based on New York State Mental Hygiene Laws §7.15, §43.01 and §43.02. 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 New York State Mental Hygiene Laws §7.15, §43.01 and §43.02 is 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 December 30, 2020, is also enclosed for your information (Appendix IV). In addition, responses to the five standard funding questions are also enclosed (Appendix V).

If you have any questions regarding this State Plan Amendment submission, please do not hesitate to contact Regina Deyette, Medicaid State Plan Coordinator, Division of Finance and Rate Setting, Office of Health Insurance Programs at (518) 473-3658.

Sincerely,

[redacted]

Donna Frescatore
Medicaid Director
Office of Health Insurance Programs

Enclosures

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

FORM APPROVED
OMB No. 0938-0193

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL

FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES

1. TRANSMITTAL NUMBER: 21 — 0015

2. STATE: New York

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

TO: REGIONAL ADMINISTRATOR
CENTERS FOR MEDICARE & MEDICAID SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE
April 01, 2021

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 and 42 CFR 447

7. FEDERAL BUDGET IMPACT
a. FFY 04/01/21-09/30/21 $ 0.00
b. FFY 10/01/21-09/30/22 $ 0.00

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 3.1-A Supplemental Pages: 3b-1, 3b-1.1, 3b-1.2, 3b-1.3
Attachment 3.1-B Supplemental Pages: 3b-1, 3b-1.1, 3b-1.2, 3b-1.3
Attachment 4.19-B Pages: 3M, 3M.1

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*

Attachment 3.1-A Supplemental Pages: 3b-1
Attachment 3.1-B Supplemental Pages: 3b-1
Attachment 4.19-B Page: 3M

10. SUBJECT OF AMENDMENT

Assertive Community Treatment Update
(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
[redacted]

13. TYPED NAME
Donna Frescatore

14. TITLE
Medicaid Director, Department of Health

15. DATE SUBMITTED
June 29, 2021

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

FOR 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

Instructions on Back

Appendix I
2021 Title XIX State Plan
Second Quarter Amendment
Amended SPA Pages

New York
3b-1

[13.d Assertive Community Treatment (ACT)]
13.d. Rehabilitative Services
Assertive Community Treatment (ACT)

[Assertive Community Treatment (ACT) programs will provide case management, treatment and rehabilitation to persons with a serious psychiatric disorder who exhibit a pattern of institutional utilization and/or are at risk of a severely dysfunctional lifestyle; present symptoms and impairments not effectively remedied by other available treatment; do not or cannot be engaged in treatment in other outpatient settings as a result of their mental illness; or cannot maintain consistency in treatment through other outpatient services.

Programs will be licensed under 14 NYCRR Part 508. Services will be provided primarily in the community. Services will be provided by a licensed multi-disciplinary team under the supervision of a psychiatrist which meets with the recipient or the recipient's significant others a minimum of six times per month. Of these six contacts, at least three of the contacts must be with the Medicaid recipient. Step down services may be provided to clients found by the team to be no longer in need of full ACT team services. A client who is receiving ACT step down must receive a minimum of two face to face contacts per month. Individuals shall be allowed to alternate between the full ACT team services and step-down services depending on the level of services needed to remain in the community.]

Definition:

Assertive Community Treatment is an evidence-based practice model recognized by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services for the treatment of individuals diagnosed with serious mental illness and who suffer from serious functional impairment whose needs have not been met by traditional service delivery approaches. ACT Services are intended to benefit individuals with serious behavioral health challenges and a treatment history that includes psychiatric hospitalization and emergency room visits, involvement with the criminal justice system, alcohol or substance abuse, homelessness, at risk of, or history of institutional level of care or residential placement, or lack of engagement in traditional outpatient services. ACT services are provided to both adults and children.

ACT is a community-based, multidisciplinary, mobile team intervention and uses assertive community outreach as the main methodology, as well as psychotherapy, medication therapy, verbal therapy, crisis intervention, rehabilitative counseling, psychoeducation, skills training, and peer support services. ACT services support individual recovery through an assertive, person-centered approach that assists individuals to cope with the symptoms of their mental illness or serious emotional disturbance and reacquire the skills necessary to function and remain integrated in the community. ACT teams also provide case management services and 24-hour coverage for crisis services.

New York
3b-1.1

13d. Rehabilitative Services
Assertive Community Treatment (ACT) (Continued)

Provider Qualifications:

ACT Services are provided by professional and paraprofessional staff under the supervision of professional staff. Paraprofessionals who are peer specialists and credentialed family peer advocates and youth peer advocates are supervised by competent mental health professionals, who are defined as Professional staff below.

Professional staff include: Physicians; Psychiatrists; Physician's Assistants; Nurse Practitioners; Psychiatric Nurse Practitioners; Registered Professional Nurses; Licensed Practical Nurses; Licensed Psychologists; Psychologists with Master's degree under the supervision of a Licensed Psychologist; Licensed Clinical Social Workers; Licensed Master Social Workers or Social Workers who have attained a Master's Degree in Social Work, who are each supervised by a Licensed Clinical Social Worker, Licensed Psychologist, or Psychiatrist; Licensed Mental Health Counselors; Mental Health Counselors who have attained a Master's Degree and are supervised by a Physician, Physician's Assistant, Licensed Clinical Social Worker, Licensed Master Social Worker, or a Licensed Mental Health Counselor; Licensed Marriage and Family Therapists; Licensed Psychoanalysts; Licensed Creative Arts Therapists; and Licensed Occupational Therapists. Professional staff may also include Credentialed Alcoholism and Substance Abuse Counselors certified pursuant to New York State regulations codified at 14 NYCRR Part 853, Pastoral Counselors; Rehabilitation Counselors; or Therapeutic Recreation Specialists; who have obtained the required education and professional certifications. Other practitioners licensed or permitted by New York State Department of Education who have specified training or experience in the treatment of individuals diagnosed with mental illness may be included as professional staff with the prior written approval of the Office of Mental Health.

Paraprofessional staff must have attained a bachelor's degree or have attained at least 18 years of age, a high-school diploma or equivalent, and at least six months of direct care experience with individuals with Serious Mental Illness or Serious Emotional Disturbance. ACT Services providers are also encouraged to employ peer specialists, who are individuals who have themselves experienced mental illness, substance use, or trauma conditions. Peer specialists must have attained a bachelor's degree or have attained at least 18 years of age, a high-school diploma or equivalent and have received specialized training.

Youth ACT Service providers also include family peer advocates who are parents or caregivers who are raising or have raised a child with serious mental health concerns and are personally familiar with the associated challenges and available community resources for children and families. Family peer advocates possess a credential recognized by the Office of Mental Health and have received specialized training and continuing education related to the delivery of peer services.

New York
3b-1.2

13d. Rehabilitative Services
Assertive Community Treatment (ACT) (Continued)

Provider Qualifications (continued):

Youth ACT service providers may also include youth peer advocates who are individuals, aged 18 to 30, who self-identify as a person with first-hand experience with social, emotional, medical, developmental, substance use, and/or behavioral challenges. At a minimum, a youth peer advocate must have a high school diploma, high school equivalency or a State Education commencement credential, possess a peer credential recognized by the Office of Mental Health, and have received specialized training and continuing education related to the delivery of peer services.

Staff Supervision and Training Requirements

Professional staff supervision for paraprofessional staff occurs both formally, through direct supervision and clinical consultation availability, as well as informally, through regular organizational and service planning meetings, which are a hallmark of the ACT evidence-based practice model. All ACT Services providers, including professionals, paraprofessionals, and peers are required to complete an ACT core training curriculum for Adult or Youth ACT teams.

Services:

ACT Services will be provided based upon the assessment of an individual's mental, physical and behavioral condition and history, which will be the basis for establishing the individual's diagnosis, functional deficits, and recovery goals. Medically necessary ACT Services will be documented in a Person-Centered Service Plan ("Service Plan"). Collateral contacts will occur with the recipient's family, and others significant in their life, that provide a direct benefit to the recipient and are conducted in accordance with, and for the purpose of advancing the recipient's Service Plan; and for coordination of services with other community mental health and medical providers.

New York
3b-1.3

13d. Rehabilitative Services
Assertive Community Treatment (ACT) (Continued)

Medically necessary ACT Services include:

a. Assessment
b. Assertive Engagement
c. Person Centered Planning
d. Case Management
e. Crisis Intervention Services
f. Community Integration
g. Health Services and Health Screening Services
h. Medication Management (evaluation/prescription/monitoring/education)
i. Consumer and Family Psychoeducation
j. Integrated Dual Disorder Treatment
k. Individual, Group, and/or Family Counseling/Therapy
l. Self-Help and Peer Support Services
m. Health and Wellness Self-management
n. Psychosocial Rehabilitative services
o. Vocational/Educational Support Services
p. Family Peer Support Services

New York
3b-1

[13.d Assertive Community Treatment (ACT)]
13.d. Rehabilitative Services
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New York
3b-1.1

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Paraprofessional staff must have attained a bachelor's degree or have attained at least 18 years of age, a high-school diploma or equivalent, and at least six months of direct care experience with individuals with Serious Mental Illness or Serious Emotional Disturbance. ACT Services providers are also encouraged to employ peer specialists, who are individuals who have themselves experienced mental illness, substance use, or trauma conditions. Peer specialists must have attained a bachelor's degree or have attained at least 18 years of age, a high-school diploma or equivalent and have received specialized training.

Youth ACT Service providers also include family peer advocates who are parents or caregivers who are raising or have raised a child with serious mental health concerns and are personally familiar with the associated challenges and available community resources for children and families. Family peer advocates possess a credential recognized by the Office of Mental Health and have received specialized training and continuing education related to the delivery of peer services.

New York
3b-1.2

13d. Rehabilitative Services
Assertive Community Treatment (ACT) (Continued)

Provider Qualifications (continued):

Youth ACT service providers may also include youth peer advocates who are individuals, aged 18 to 30, who self-identify as a person with first-hand experience with social, emotional, medical, developmental, substance use, and/or behavioral challenges. At a minimum, a youth peer advocate must have a high school diploma, high school equivalency or a State Education commencement credential, possess a peer credential recognized by the Office of Mental Health, and have received specialized training and continuing education related to the delivery of peer services.

Staff Supervision and Training Requirements

Professional staff supervision for paraprofessional staff occurs both formally, through direct supervision and clinical consultation availability, as well as informally, through regular organizational and service planning meetings, which are a hallmark of the ACT evidence-based practice model. All ACT Services providers, including professionals, paraprofessionals, and peers are required to complete an ACT core training curriculum for Adult or Youth ACT teams.

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ACT Services will be provided based upon the assessment of an individual's mental, physical and behavioral condition and history, which will be the basis for establishing the individual's diagnosis, functional deficits, and recovery goals. Medically necessary ACT Services will be documented in a Person-Centered Service Plan ("Service Plan"). Collateral contacts will occur with the recipient's family, and others significant in their life, that provide a direct benefit to the recipient and are conducted in accordance with, and for the purpose of advancing the recipient's Service Plan; and for coordination of services with other community mental health and medical providers.

New York
3b-1.3

13d. Rehabilitative Services
Assertive Community Treatment (ACT) (Continued)

Medically necessary ACT Services include:

a. Assessment
b. Assertive Engagement
c. Person Centered Planning
d. Case Management
e. Crisis Intervention Services
f. Community Integration
g. Health Services and Health Screening Services
h. Medication Management (evaluation/prescription/monitoring/education)
i. Consumer and Family Psychoeducation
j. Integrated Dual Disorder Treatment
k. Individual, Group, and/or Family Counseling/Therapy
l. Self-Help and Peer Support Services
m. Health and Wellness Self-management
n. Psychosocial Rehabilitative services
o. Vocational/Educational Support Services
p. Family Peer Support Services

New York
3M

Assertive Community Treatment (ACT) Reimbursement

[Services will be provided primarily in the community by a licensed multi-disciplinary team under the supervision of a psychiatrist which meets with the recipient or the recipient's significant others a minimum of six times per month for full ACT payment, or two time per month for ACT step-down payment. For full ACT payment, at least three of the six contacts must be with the Medicaid recipient. For ACT step-down services, both of the two required contacts must be with the client.

Monthly fees as approved by Division of Budget will be set by dividing total gross approved costs by twelve months and the number of clients and will include a vacancy factor of 10% OMH will consult with DOH regarding any changes to the fees.]

ACT services are reimbursed regional monthly fees per individual for ACT teams serving either 36, 48, or 68 individuals, as follows. Except as otherwise noted in the plan, monthly fees are the same for both governmental and non-governmental providers of ACT services. Up-to-date ACT service reimbursement rates can be found at the following link:

https://www.omh.ny.gov/omhweb/medicaid_reimbursement/excel/act.xlsx

Monthly fees are based on projected costs necessary to operate an ACT team of each size and are calculated by dividing allowable projected annual costs by 12 months and by team size. Such monthly fee is then adjusted by a vacancy factor to account for actual fluctuations in case load or when the provider cannot submit full or partial month claims because the minimum contact threshold cannot be met.

ACT services are reimbursed either the full, partial/stepdown, or inpatient fee based on the number of discrete contacts of at least 15 minutes in duration in which ACT services are provided. Providers may not bill more than one monthly fee, including the full, partial/stepdown, and inpatient fees, for the same individual in the same month.

ACT services are reimbursed the full fee for a minimum of six contacts per month, at least three of which must be face-to-face with the individual. ACT services are reimbursed the partial/stepdown fee for a minimum of two and fewer than six contacts per month, of which two must be face-to-face with the individual. No more than one contact per day is counted for reimbursement purposes, except if two separate contacts are provided on the same day, including one face-to-face contact with an individual and one collateral contact.

New York
3M.1

Assertive Community Treatment (ACT) Reimbursement (Continued)

If an individual is admitted to an inpatient facility, ACT services are reimbursed the inpatient fee for a minimum of two contacts per month with enrolled individuals during an inpatient facility admission and are reimbursed the inpatient fee for up to five months. For purposes of this provision, an inpatient admission is considered continuous if the individual is readmitted within 10 days of discharge. ACT services may be reimbursed the full or partial/stepdown fee during the months of the individual's admission and discharge dates from the inpatient facility, based on the combined number of community and inpatient contacts, as follows:

- The full fee is reimbursable if the provider meets the minimum of six contacts per month, of which up to two contacts may be provided in the inpatient setting.
- The partial/stepdown fee is reimbursable if the provider meets the minimum of two contacts per month, of which up to one may be provided in the inpatient setting.

No more than one contact per day is counted for reimbursement purposes, except if two separate face-to-face contacts are provided to an individual/youth and a collateral on the same day.

Appendix II
2021 Title XIX State Plan
Second Quarter Amendment
Summary

SUMMARY
SPA #21-0015

This State Plan Amendment proposes to codify and comprehensively describe existing service coverage, eligibility and reimbursement standards.

Appendix III
2021 Title XIX State Plan
Second Quarter Amendment
Authorizing Provisions

SPA 21-0015

New York State Mental Hygiene Laws §7.15

(a) The commissioner shall plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services of prevention, diagnosis, examination, care, treatment, rehabilitation, training, and research for the benefit of the mentally ill. Such programs shall include but not be limited to in-patient, out-patient, partial hospitalization, day care, emergency, rehabilitative, and other appropriate treatments and services. He or she shall take all actions that are necessary, desirable, or proper to implement the purposes of this chapter and to carry out the purposes and objectives of the department within the amounts made available therefor by appropriation, grant, gift, devise, bequest, or allocation from the mental health services fund established under section ninety-seven-f of the state finance law.

(b) The activities described in subdivision (a) of this section may be undertaken in cooperation and agreement with other offices of the department and with other departments or agencies of the state, local or federal government, or with other organizations and individuals.

New York State Mental Hygiene Laws §43.01

(a) The department shall charge fees for its services to patients and residents, provided, however, that no person shall be denied services because of inability or failure to pay a fee.

(b) The commissioner may establish, at least annually, schedules of rates for inpatient services that reflect the costs of services, care, treatment, maintenance, overhead, and administration which assure maximum recovery of such costs.

In addition, the commissioner may establish, at least annually, schedules of fees for noninpatient services which need not reflect the costs of services, care, treatment, maintenance, overhead, and administration.

(c) The executive budget, as recommended, shall reflect, by individual facility, the costs of services, care, treatment, maintenance, overhead, and administration.

(d) All schedules of fees and rates which are established by the commissioner, shall be subject to the approval of the director of the division of the budget. Immediately upon their approval, copies of all schedules of fees and rates established pursuant to this section shall be forwarded to the chairman of the assembly ways and means committee and the chairman of the senate finance committee.

New York State Mental Hygiene Laws §43.02

(a) Notwithstanding any inconsistent provision of law, payment made by government agencies pursuant to title eleven of article five of the social services law for services provided by any facility licensed by the office of mental health pursuant to article thirty-one of this chapter or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services, as defined in section 1.03 of this chapter, shall be at rates or fees certified by the commissioner of the respective office and approved by the director of the

division of the budget, provided, however, the commissioner of mental health shall annually certify such rates or fees which may vary for distinct geographical areas of the state and, provided, further, that rates or fees for service for inpatient psychiatric services or inpatient chemical dependence services, at hospitals otherwise licensed pursuant to article twenty-eight of the public health law shall be established in accordance with section two thousand eight hundred seven of the public health law and, provided, further, that rates or fees for services provided by any facility or program licensed, operated or approved by the office for people with developmental disabilities, shall be certified by the commissioner of health; provided, however, that such methodologies shall be subject to approval by the office for people with developmental disabilities and shall take into account the policies and goals of such office.

(b) Operators of facilities licensed by the office of mental health pursuant to article thirty-one of this chapter, licensed by the office for people with developmental disabilities pursuant to article sixteen of this chapter or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services shall provide to the commissioner of the respective office such financial, statistical and program information as the commissioner may determine to be necessary. The commissioner of the appropriate office shall have the power to conduct on-site audits of books and records of such facilities.

(c) The commissioner of the office of mental health, the commissioner of the office for people with developmental disabilities and the commissioner of the office of alcoholism and substance abuse services shall adopt rules and regulations to effectuate the provisions of this section. Such rules and regulations shall include, but not be limited to, provisions relating to:

(i) the establishment of a uniform statewide system of reports and audits relating to the quality of care provided, facility utilization and costs of providing services; such a uniform statewide system may provide for appropriate variation in the application of the system to different classes or subclasses of facilities licensed by the office of mental health pursuant to article thirty-one of this chapter or licensed or operated by the office for people with developmental disabilities pursuant to article sixteen of this chapter, or certified by the office of alcoholism and substance abuse services pursuant to this chapter to provide inpatient chemical dependence services; and

(ii) methodologies used in the establishment of the schedules of rates or fees pursuant to this section provided, however, that the commissioner of health shall adopt rules and regulations including methodologies developed by him or her for services provided by any facility or program licensed, operated or approved by the office for people with developmental disabilities; provided, however, that such rules and regulations shall be subject to the approval of the office for people with developmental disabilities and shall take into account the policies and goals of such office.

Appendix IV
2021 Title XIX State Plan
Second Quarter Amendment
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

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 Civil Service

PURSUANT to the Open Meetings Law, the New York State Civil Service Commission hereby gives public notice of the following:

Please take notice that the regular monthly meeting of the State Civil Service Commission for January 2021 will be conducted on January 13 and January 14 commencing at 10:00 a.m. This meeting will be conducted at NYS Media Services Center, Suite 146, South Concourse, Empire State Plaza, Albany, NY with live coverage available at https://www.cs.ny.gov/commission/.

For further information, contact: Office of Commission Operations, Department of Civil Service, Empire State Plaza, Agency Bldg. One, Albany, NY 12239, (518) 473-6598

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 Social Services Law Section 365-a. The following changes for the Medicaid Alternative Benefit Plan (ABP) are proposed. The ABP includes all mandatory and optional benefits defined in the New York Medicaid State Plan under the categorically needy population designation.

Non-Institutional Services

Effective on or after October 1, 2020 the Department is proposing to remove the annual physical therapy, occupational therapy, and speech therapy visit caps and replace with authorization based on medical necessity. Revision of the physical therapy, occupational therapy and speech annual cap will provide members an opportunity to obtain additional rehabilitation therapy as a pathway to nonpharmacologic treatment alternative for pain management. The Department assures access to early and periodic screening, diagnostic and treatment (EPSDT) services will continue unchanged.

There is no additional estimated annual change to gross Medicaid expenditures as a result of this proposed amendment.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at http://www.health.ny.gov/regulations/state_plans/status. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

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

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

Kings County, Fulton Center
114 Willoughby Street
Brooklyn, New York 11201

Bronx County, Tremont Center
1916 Monterey Avenue
Bronx, New York 10457

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

For further information and to review and comment, please contact: Department of Health, Division of Finance and Rate Setting, 99 Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY 12210, spa_inquiries@health.ny.gov

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 consistent with New York State Mental Hygiene Laws § 7.15 and § 43.02. The following changes are proposed:

Non-Institutional Services

Effective on or after December 31, 2020, the New York State Offices of Mental Health will amend the New York Medicaid State Plan for rehabilitation services provided by Assertive Community Treatment (ACT) programs. The amendments are intended to codify and comprehensively describe existing service coverage, eligibility and reimbursement standards.

There is no additional estimated annual change to gross Medicaid expenditures as a result of this proposed amendment.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at http://www.health.ny.gov/regulations/state_plans/status. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

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Bronx County, Tremont Center
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Bronx, New York 10457

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

For further information and to review and comment, please contact: Department of Health, Division of Finance and Rate Setting, 99 Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY 12210, spa_inquiries@health.ny.gov

PUBLIC NOTICE

Department of Health

Pursuant to 42 CFR Section 447.57, 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 Section 367-a(6)(c)(iii) of Social Services Law. The following changes are proposed:

Non-Institutional Services:

Effective on or after January 1, 2021, this notice proposes to correct SPA 17-0029 regarding copayment for preferred brand-name prescription drugs that are not part of the Brand Less Than Generic Program, consistent with the March 29, 2017 Federal Public Notice regarding pharmacy copayments. Specifically,

• The co-pay for preferred brand-name prescription drugs will be corrected to change the copayment from $1.00 to $2.50, provided, however, that the copayments for brand name prescriptions drugs in the Fee-for-Service Brand Less Than Generic program will continue to be $1.00.

There is no additional estimated annual change to gross Medicaid expenditures as a result of the proposed amendments.

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at http://www.health.ny.gov/regulations/state_plans/status. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

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

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

Kings County, Fulton Center
114 Willoughby Street
Brooklyn, New York 11201

Bronx County, Tremont Center
1916 Monterey Avenue
Bronx, New York 10457

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

For further information and to review and comment, please contact: Department of Health, Division of Finance and Rate Setting, 99 Washington Ave., One Commerce Plaza, Suite 1432, Albany, NY 12210, spa_inquiries@health.ny.gov

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 Title 14 NYCRR Parts 822 and 841 and 42 CFR 440.130(d). The following changes are proposed:

Non-Institutional Services

The COVID emergency SPA covering the NYS Office of Addiction Services and Supports (OASAS) Opioid Treatment Programs (OTPs) ends on January 21, 2021. That SPA permitted billing weekly OTP (Opioid Treatment Programs) bundles under a methodology similar to that of Medicare. Effective on or after January 1, 2021, OASAS proposed to establish those bundled rates as a permanent alternative to the OTP Ambulatory Patient Group (APG) methodology. Each week, for any given patient, the provider must choose to bill under either the APG methodology or the bundled weekly rates, generally based on the amount of face-to-face contact with the patient during that week and the specific services provided.

The following is a clarification to the October 28, 2020 noticed already provided. There will be a small savings in fee-for-service Medicaid associated with this initiative of approximately ($920,000) per year (all shares). The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2020/2021 is ($230,000).

The public is invited to review and comment on this proposed State Plan Amendment, a copy of which will be available for public review on the Department's website at http://www.health.ny.gov/regulations/state_plans/status. Individuals without Internet access may view the State Plan Amendments at any local (county) social services district.

For the New York City district, copies will be available at the following places:

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Appendix V
2021 Title XIX State Plan
Second Quarter Amendment
Responses to Standard Funding Questions

NON-INSTITUTIONAL SERVICES
State Plan Amendment #21-0015

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 the state plan. 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 2 CFR 200 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 behavioral health programs, which is the Office of Mental Health.

The source of the appropriation is the Local Assistance Account under the General Fund/Aid to Localities.

There are no new provider taxes and no existing taxes have been modified.

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: Early intervention services are covered as rehabilitation services and are, therefore, not held to UPL requirements.

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 Early Intervention Services is a prospective methodology. We are unaware of any requirement under current federal law or regulation that limits individual provider's 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 [✓] violate these provisions, if they remained in effect on or after January 1, 2014.

3. **Please indicate whether the State is currently in conformance with the requirements of section 1902(a)(37) of the Act regarding prompt payment of claims.**

   Response: The State 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: Tribal consultation was performed in accordance with the State's tribal consultation policy as approved in SPA 17-0065, and documentation of such is included with this submission. To date, no feedback has been received from any tribal representative in response to the proposed change in this SPA.