



Department
of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 30, 2021

Todd McMillion
Director
Department of Health and Human Services
Centers for Medicare and Medicaid Services
233 North Michigan Ave, Suite 600
Chicago, IL 60601

RE: SPA #21-0061
Non-Institutional Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #21-0061 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective October 14, 2021 (Appendix I). This amendment is being submitted based on enacted legislation. 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 enacted legislation is enclosed for your information (Appendix III). Copies of the public notice of this plan amendment, which were given in the New York State Register on October 13, 2021 and clarified on January 19, 2022, are 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,

Brett R. Friedman
Acting Medicaid Director
Office of Health Insurance Programs

Enclosures

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER

2 1 — 0 0 6 1

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

October 14, 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 10/14/21-09/30/22 \$ 10,185.00

b. FFY 10/01/22-09/30/23 \$ 4,050.00

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment: 4.19-B Page: 3L-4

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (*If Applicable*)

Attachment: 4.19-B Page: 3L-4

10. SUBJECT OF AMENDMENT

Personalized Recovery Oriented Services Investments (PROS)
(FMAP=60% through 3/31/22, 50% thereafter)

11. GOVERNOR'S REVIEW (*Check One*)

GOVERNOR'S OFFICE REPORTED NO COMMENT

OTHER, AS SPECIFIED

COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL

12. SIGNATURE OF STATE AGENCY OFFICIAL

[Redacted Signature]

13. TYPED NAME

Brett R. Friedman

14. TITLE

Acting Medicaid Director, Department of Health

15. DATE SUBMITTED

December 30, 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

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

New York
3L-4

1905(a) Rehabilitative Services

Intensive Rehabilitation (IR):

In addition to the monthly base rate (and reimbursement for Clinical Treatment, if applicable), PROS providers will receive an additional monthly add-on for providing at least one IR service to an individual who has received at least six units during the month.

In instances where a PROS provider provides IR services to an individual, but CRS services are provided by another PROS provider or no CRS services are provided in the month, the minimum six units required will be limited to the provision of IR services and only the IR add-on will be reimbursed.

The maximum number of IR add-on payments to a PROS provider will not exceed 50 percent of that provider's total number of monthly base rate claims reimbursed in the same calendar year.

Ongoing Rehabilitation and Support (ORS):

In addition to the monthly base rate (and reimbursement for Clinical Treatment, if applicable), PROS providers will receive an additional monthly add-on for providing ORS services. Reimbursement requires a minimum of two face-to-face contacts per month, which must occur on two separate days. A minimum contact is 30 continuous minutes in duration. The 30 continuous minutes may be split between the individual and the collateral. At least one visit per month must be with the individual only.

The ORS or IR add-on payment can be claimed independently or in addition to the base rate (and Clinical Treatment, if applicable). ORS and IR will not be reimbursed in the same month for the same individual.

Pre-admission Screening Services:

PROS providers will be reimbursed at a regional monthly case payment for an individual in pre-admission status. Reimbursement for an individual in pre-admission status is limited to the pre-admission rate. If the individual receives pre-admission screening services during the month of admission, the base rate is calculated using the entire month but no reimbursement is permitted to Clinical Treatment, IR or ORS.

Reimbursement for pre-admission screening services is limited to two consecutive months.

PROS Rates of Payment: PROS rates of payment are adjusted, effective July 1, 2021, for a one percent cost of living adjustment increase. PROS rates of payment are adjusted, effective October 14, 2021 to enhance and strengthen rehabilitative services in the Medicaid program, including programmatic and workforce initiatives pursuant to Section 9817 of the American Rescue Plan Act.

PROS rates of payment are available on the OMH website at:
http://www.omh.ny.gov/omhweb/medicaid_reimbursement/

TN #21-0061

Approval Date _____

Supersedes TN #21-0044

Effective Date October 14, 2021

Appendix II
2021 Title XIX State Plan
Fourth Quarter Amendment
Summary

SUMMARY
SPA #21-0061

This State Plan Amendment proposes to see two rate increases borne out of enhanced FMAP under ARPA. First increase will be for program enhancement and second is for workforce training, recruitment, and retention.

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

SPA 21-0061

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.

SEC. 9817. ADDITIONAL SUPPORT FOR MEDICAID HOME AND COMMUNITY-BASED SERVICES

DURING THE COVID-19 EMERGENCY. (a) INCREASED FMAP.— (1) IN GENERAL.— Notwithstanding section 1905(b) of the Social Security Act (42 U.S.C. 1396d(b)) or section 1905(ff), in the case of a State that meets the HCBS program requirements under subsection (b), the Federal medical assistance percentage determined for the State under section 1905(b) of such Act (or, if

applicable, under section 1905(ff)) and, if applicable, increased under subsection (y), (z), (aa), or (ii) of section 1905 of such Act (42 U.S.C. 1396d), section 1915(k) of such Act (42 U.S.C. 1396n(k)), or section 6008(a) of the Families First Coronavirus Response Act (Public Law 116- 127), shall be increased by 10 percentage points with respect to expenditures of the State under the State Medicaid program for home and community-based services (as defined in paragraph (2)(B)) that are provided during the HCBS program improvement period (as defined in paragraph (2)(A)). In no case may the application of the previous sentence result in the Federal medical assistance percentage determined for a State being more than 95 percent with respect to such expenditures. Any payment made to Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, or American Samoa for expenditures on medical assistance that are subject to the Federal medical assistance percentage increase specified under the first sentence of this paragraph shall not be taken into account for purposes of applying payment limits under subsections (f) and (g) of section 1108 of the Social Security Act (42 U.S.C. 1308).

(2) DEFINITIONS.—In this section: (A) HCBS PROGRAM IMPROVEMENT PERIOD.—The term “HCBS program improvement period” means, with respect to a State, the period— (i) beginning on April 1, 2021; and (ii) ending on March 31, 2022. (B) HOME AND COMMUNITY-BASED SERVICES.—The term “home and community-based services” means any of the following: H. R. 1319–214 (i) Home health care services authorized under paragraph (7) of section 1905(a) of the Social Security Act (42 U.S.C. 1396d(a)). (ii) Personal care services authorized under paragraph (24) of such section. (iii) PACE services authorized under paragraph (26) of such section. (iv) Home and community-based services authorized under subsections (b), (c), (i), (j), and (k) of section 1915 of such Act (42 U.S.C. 1396n), such services authorized under a waiver under section 1115 of such Act (42 U.S.C. 1315), and such services through coverage authorized under section 1937 of such Act (42 U.S.C. 1396u-7). (v) Case management services authorized under section 1905(a)(19) of the Social Security Act (42 U.S.C. 1396d(a)(19)) and section 1915(g) of such Act (42 U.S.C. 1396n(g)). (vi) Rehabilitative services, including those related to behavioral health, described in section 1905(a)(13) of such Act (42 U.S.C. 1396d(a)(13)). (vii) Such other services specified by the Secretary of Health and Human Services. (C) ELIGIBLE INDIVIDUAL.—The term “eligible individual” means an individual who is eligible for and enrolled for medical assistance under a State Medicaid program and includes an individual who becomes eligible for medical assistance under a State Medicaid program when removed from a waiting list. (D) MEDICAID PROGRAM.—The term “Medicaid program” means, with respect to a State, the State program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (including any waiver or demonstration under such title or under section 1115 of such Act (42 U.S.C. 1315) relating to such title). (E) STATE.—The term “State” has the meaning given such term for purposes of title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(b) STATE REQUIREMENTS FOR FMAP INCREASE.—As conditions for receipt of the increase under subsection (a) to the Federal medical assistance percentage determined for a State, the State shall meet each of the following requirements (referred to in subsection (a) as the HCBS program requirements): (1) SUPPLEMENT, NOT SUPPLANT.—The State shall use the Federal funds attributable to the increase under subsection (a) to supplement, and not supplant, the level of State funds expended for home and community-based services for eligible individuals through programs in effect as of April 1, 2021. (2) REQUIRED IMPLEMENTATION OF CERTAIN ACTIVITIES.— The State shall implement, or supplement the implementation of, one or more activities to enhance, expand, or strengthen home and community-based services under the State Medicaid program.

Appendix IV
2021 Title XIX State Plan
Fourth Quarter Amendment
Public Notice

Public Notice
NYS 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 enhance and increase access to Home and Community Based Services (HCBS) in accordance with the federal statutory provisions of Section 9817 of the American Rescue Plan Act of 2021 (ARP).

Non-Institutional Services

The following is a clarification to the October 13, 2021 noticed provision that proposed to increase Personalized Recovery Oriented Services (PROS) reimbursement rates.

With clarification, the rates for state-plan approved Personalized Recovery Oriented Services (PROS) will be increased by 10.30 percent annually, effective October 14, 2021. However, to allow for full disbursement of funds available April 1, 2021 – March 31, 2022, the rate increase for the period October 14, 2021 – March 31, 2022 will be an additional 12.00 percent, for a total increase of 22.30 percent. Rates will then be reduced 12.00 percent effective April 1, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of this proposed increase for PROS is \$8,100,000.

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:

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:

New York State Department of Health
Division of Finance and Rate Setting
99 Washington Ave – One Commerce Plaza
Suite 1432
Albany, New York 12210
spa_inquiries@health.ny.gov

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 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 enhance and increase access to Home and Community Based Services (HCBS) in accordance with the federal statutory provisions of Section 9817 of the American Rescue Plan Act of 2021 (ARP) which, subject to approval of the State's initial spending plan and narrative (Spending Plan) by the Centers for Medicare and Medicaid Services (CMS), provides a ten percent increase in Federal Medical Assistance Percentage (FMAP) to state Medicaid programs from April 1, 2021 to March 31, 2022 to supplement existing state expenditures on HCBS. The following changes are proposed:

Non-Institutional Services

Contingent upon CMS approval of the Spending Plan submitted by the State, effective on or after October 14, 2021, this notice proposes to increase reimbursement rates as follows:

Rates for state-plan approved Personalized Recovery Oriented Services (PROS) will be increased by 10.30 percent annually, effective October 14, 2021. However, to allow for full disbursement of funds available April 1, 2021 – March 31, 2022, the rate increase for the period October 14, 2021 – March 31, 2022 will be an additional 12.00 percent, for a total increase of percent. Rates will then be reduced 12.00 percent effective April 1, 2022. This enhancement will allow providers to supplement the implementation of one or more activities to enhance, expand or strengthen HCBS under the Medicaid program, including, but not limited to, strengthening the response to the COVID-19 Public Health Emergency, assisting providers in meeting the challenges of changing population demographics, and enhancement of their programs, including but not limited to providing services with higher staff to recipient rations and at offsite locations.

The estimated annual net aggregate increase in gross Medicaid

expenditures as a result of this proposed increase for PROS is \$8,100,000.

Additionally, rates for state-plan approved Personalized Recovery Oriented Services (PROS) will be increased by an additional 13.10 percent for the period October 14, 2021 – March 31, 2022. This enhancement will allow providers to increase recruitment and retention of experienced and dedicated direct care and other staff through measures including, but not limited to, targeted loan forgiveness, tuition reimbursement, hiring and signing bonuses, longevity payments, expanded student placements, shift differential pay and retirement contributions.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of this proposed increase for PROS is \$5,500,000.

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:

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 State F-2020-0241

Date of Issuance – October 13, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of

the Federal Coastal Zone Management Act (CZMA) of 1972, as amended.

The applicant has certified that the proposed activities comply with and will be conducted in a manner consistent with the federally approved New York State Coastal Management Program (NYSCMP). The applicant's consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

In F-2021-0241, Frank M. Flower & Sons, Inc. proposes to renew the Army Corps of Engineers' Nationwide Permit #48 for shellfish aquaculture operations within the Oyster Bay Cold Spring Harbor Complex, Town of Oyster Bay, Nassau County, NY.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/10/F-2021-0241FrankMFlowerSonsConsistencyCert.pdf>

More Information regarding the Corps' Nationwide Permit Program can be found at: https://www.nan.usace.army.mil/Portals/37/docs/regulatory/Nationwide%20Permit/NWP2021/NWP%20Water%20Quality%20Cert%202021.pdf?ver=YuW-a82wzh_IppKNE99FoQ%3d%3d

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice or by Friday, November 12, 2021.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2021-0381

Date of Issuance – October 13, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act (CZMA) of 1972, as amended.

The applicant has certified that the proposed activities comply with and will be conducted in a manner consistent with the federally approved New York State Coastal Management Program (NYSCMP). The applicant's consistency certification and accompanying public information and data are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

In F-2021-0381, Peter Sidoti is proposing to construct a new wave breaks structures off the existing dock. Proposed construction of a 66' long, 34' and 27' timber wavebreaks. The site is located on Great South Bay at Four Sloop Walk, Ocean Beach, NY 11770, Suffolk County.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/10/f-2021-0381sidoti.pdf>

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice or November 12, 2021.

Comments should be addressed to: Department of State, Office of Planning and Development and Community Infrastructure, Consistency Review Unit, One Commerce Plaza, Suite 1010, 99 Washington Ave., Albany, NY 12231, (518) 474-6000. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2021-0530

Date of Issuance – October 13, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-0530, Anthony Finuoli, is proposing to construct a residential pier to include a 51' x 4' timber pier dock with open grate, 40' x 3' aluminum gangway, and two 20' x 8' floats and six 12" diameter timber piles. The project is located at 285 Asharoken Avenue, Village of Asharoken, Suffolk County, on Northport Bay.

The purpose of the proposed project is to allow safe access to the water for the property owner for water dependent uses.

The applicant's consistency certification and supporting information are available for review at: <http://www.dos.ny.gov/opd/programs/pdfs/Consistency/F-2021-0530.pdf>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

Any interested parties and/or agencies desiring to express their views concerning any of the above proposed activities may do so by filing their comments, in writing, no later than 4:30 p.m., 30 days from the date of publication of this notice, or, October 28, 2021.

Comments should be addressed to: Consistency Review Unit, Department of State, Office of Planning, Development and Community Infrastructure, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231, (518) 474-6000, Fax (518) 473-2464. Electronic submissions can be made by email at: CR@dos.ny.gov

This notice is promulgated in accordance with Title 15, Code of Federal Regulations, Part 930.

PUBLIC NOTICE

Department of State
F-2021-0593

Date of Issuance - October 13, 2021

The New York State Department of State (DOS) is required by Federal regulations to provide timely public notice for the activities described below, which are subject to the consistency provisions of the Federal Coastal Zone Management Act of 1972, as amended.

The applicant has certified that the proposed activity complies with and will be conducted in a manner consistent with the approved New York State Coastal Management Program.

In F-2021-0593, The Suffolk County Department of Health Services is proposing to construct a fish passage at Upper Mills Dam located on the Peconic River in Riverhead, New York. This will be completed by installing a 6' x 12' precast concrete culvert to pass all flows through the dam, install seven weir structures upstream of the culvert, and install four weir structures downstream. Approximately 381 CY of excavation is required upstream of the culvert and approximately 798 CY downstream of the culvert to establish the grade of the fish passage. To create the fish passage structure, approximately 106 CY of grouted rip-rap is proposed to be installed upstream of the culvert. On the downstream end of the culvert, approximately 138 CY of grouted rip-rap and 108 CY of dry rip-rap is proposed.

The applicant's consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/october/f-2021-0593consistcert.pdf>

Original copies of public information and data submitted by the applicant are available for inspection at the New York State Department of State offices located at One Commerce Plaza, 99 Washington Avenue, in Albany, New York.

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

NON-INSTITUTIONAL SERVICES
State Plan Amendment #21-0061

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: PROS services are provided under the State Plan rehabilitation option and, as such, are not subject to upper payment limit (UPL) calculations.

- 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: There are various state agencies that perform audits each year to determine the appropriateness of Medicaid payments. In the event that inappropriate payments are determined, recoupments would be initiated, and the Federal share would be returned to CMS within the associated quarterly expenditure report.

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.