NEW YORK STATE OF OPPORTUNITY. 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

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 #21-0067
Non-Institutional Services

Dear Mr. Scott:

The State requests approval of the enclosed amendment #21-0067 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective November 1, 2021 (Appendix I). This amendment is being submitted to permit the remote delivery of services. 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). A copy of the public notice of this plan amendment, which was given in the New York State Register on October 27, 2021, 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]

Brett R. Friedman
Acting 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 — 0067

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
November 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
§1915(g) of the Social Security Act

7. FEDERAL BUDGET IMPACT
a. FFY 11/01/21-09/30/22 $ 0.00
b. FFY 10/01/22-09/30/23 $ 0.00

8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT

Attachment 4.19 B Page: 3(h.14)
Attachment 3.1 A Supplemental Page: 3b-38
Attachment 3.1 B Supplemental Page: 3b-38

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 PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT *(If Applicable)*

Attachment 4.19 B Page: 3(h.14)
Attachment 3.1 A Supplemental Page: 3b-38
Attachment 3.1 B Supplemental Page: 3b-38

10. SUBJECT OF AMENDMENT

CSIDD
(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
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

Instructions on Back

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

13d. Rehabilitative Services

Crisis Services for Individuals with Intellectual and/or Developmental Disabilities (CSIDD)

Office for People With Developmental Disabilities (OPWDD)

The services described below are: CSIDD Clinical Team Services

Assurances
The State assures that all Crisis Services for Individuals with Intellectual and/or Developmental Disabilities (CSIDD) services are provided to, or directed exclusively toward the treatment of, Medicaid eligible individuals in accordance with Section 1902(a)(10)(A)(i) of the Act.

The State assures that CSIDD services do not include and FFP is not available for any of the following.

A. educational, vocational and job training services;
B. room and board except when furnished as part of respite care services;
C. habilitation services;
D. services to inmates in public institutions as defined in 42 CFR § 435.1010;
E. services to individuals residing in institutions for mental diseases as described in 42 CFR § 435.1009;
F. recreational and social activities; and
G. services that must be covered elsewhere in the Medicaid State Plan.

Description
Crisis Services for Individuals with Intellectual and/or Developmental Disabilities (CSIDD) are rehabilitative short-term targeted services for individuals with intellectual and/or developmental disabilities (I/DD) who have significant behavioral or Mental Health (MH) needs. Services are delivered by multi-disciplinary teams that provide personalized and intensive, time-limited services for those age 6 and older. This is a high intensity service recommended for individuals who experience frequent hospitalizations, crisis visits, and use of mobile emergency services and are at risk of losing placement and/or services. Services will be provided to all individuals who meet medical necessity criteria for this service. Teams provide clinical consultation and treatment and will maintain 24/7 service accessibility throughout the course of treatment for those individuals enrolled in CSIDD. CSIDD is a short-term tertiary care service designed to help stabilize individuals with MI/DD within their existing care networks using specially trained behavior support professionals to build skills and de-escalate the individual's behaviors. Once the individual is stabilized, the CSIDD team will discharge the individual from the team's caseload.

The state will allow the remote delivery of CSIDD through telephone or other technology in accordance with State, Federal, and Health Insurance Portability and Accountability Act (HIPAA) requirements. Other technology means any two-way, real-time communication technology that meets HIPAA requirements.

All services provided are for the direct benefit of the individual in accordance with the individual's needs and treatment goals identified in the individual's treatment plan, and for the purpose of assisting in the individual's recovery.

13d. Rehabilitative Services

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All services provided are for the direct benefit of the individual in accordance with the individual's needs and treatment goals identified in the individual's treatment plan, and for the purpose of assisting in the individual's recovery.

Rate Setting

1. The method of reimbursement for Crisis Services for Individuals with Intellectual and/or Developmental Disabilities (CSIDD) will be a fee established by OPWDD in conjunction with the New York State Department of Health and approved by the New York State Division of the Budget. The fee schedule to be paid is as follows:

LEVEL OF INVOLVMENT	LEVEL	UPSTATE FEE	DOWNSTATE FEE	UNIT OF SERVICE
Stable	1	$56.29	$64.77	Monthly
Mild	2	$375.27	$431.77	Monthly
Moderate	3	$405.29	$466.31	Monthly
Intensive	4	$799.33	$919.65	Monthly

i. Billing Standards

a. Stable – periodic (quarterly) intervention - At least one month in each quarter requires the delivery and documentation of a face-to-face service.

b. Mild – monthly intervention - Provider may bill the monthly unit of service when CSIDD services are rendered and at a minimum one face-to-face service is delivered during [in] the month and documented.

c. Moderate – multiple outreaches per month - Provider may bill the monthly unit of service when CSIDD services are rendered and [documents more than one face-to per] at least two services are delivered [service] per month and documented. No more than one of the required services, plus any additional services, may be delivered via remote service delivery.

d. Intensive – weekly or more outreach - Provider may bill the monthly unit of service when CSIDD services are rendered and [face-to-face] services [are provided] are delivered on a weekly basis and documented. No more than two of the required services, plus any additional services, may be provided via remote service delivery.

Any services delivered remotely must be in the best interest of the individual.

ii. Reporting requirements

a. Providers will be required to complete cost reports on an annual basis.

Appendix II
2021 Title XIX State Plan
Fourth Quarter Amendment
Summary

SUMMARY
SPA #21-0067

This State Plan Amendment proposes to allow the remote delivery of Crisis Services for Individuals with Intellectual and/or Developmental Disabilities (CSIDD). The State will allow the remote delivery of CSIDD through telephonic or other technology in accordance with State, Federal, and Health Insurance Portability and Accountability Act (HIPAA) requirements. Other technology means any two-way, real-time communication technology that meets HIPAA requirements.

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

SPA 21-0067

New York Mental Hygiene Law (MHL) § 13.07(a)
The Office for People with Developmental (OPWDD) Disabilities shall ensure the development of comprehensive plans, programs, and services in the areas of research, prevention, and care, treatment, habilitation, rehabilitation, vocational and other education, and training of individuals with developmental disabilities. Such plans, programs, and services shall be developed by the cooperation of the office, other offices of the department where appropriate, other state departments and agencies, local governments, community organizations and agencies providing services to individuals with developmental disabilities, their families and representatives. It shall provide appropriate facilities, programs, supports and services and encourage the provision of facilities, programs, supports and services by local government and community organizations and agencies.

MHL § 13.09(b)
The Commissioner shall adopt rules and regulations necessary and proper to implement any matter under his jurisdiction. In promulgating rules and regulations, the Commissioner shall comply with the requirements of subdivision (e) of section 13.05 of this article.

MHL § 16.00
This article sets forth provisions enabling the Commissioner of the Office for People with Developmental (OPWDD) Disabilities to regulate and assure the consistent high quality of services provided within the state to its citizens with intellectual and developmental disabilities. The Commissioner may adopt and promulgate any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by this article. This article shall govern the operation of programs, provision of services and the facilities hereinafter described and the Commissioner's powers and authority with respect thereto, and shall supersede, as to such matters, sections of article thirty-one that are inconsistent with the provisions of this chapter.

New York Social Services Law § 363-a
Requires the New York State Department of Health to submit and maintain the state plan for medical assistance, governed by the Social Security Act.

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

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 permit remote delivery of services. The following changes are proposed:

Non-Institutional Services

Effective on and after November 1, 2021, the Office for People With Developmental Disabilities' (OPWDD) will allow reimbursement for the remote delivery of Crisis Services for Individuals with Intellectual and/or Developmental Disabilities (CSIDD). The State will allow reimbursement for the remote delivery of CSIDD through telephonic or other technology in accordance with State, Federal, and Health Insurance Portability and Accountability Act (HIPAA) requirements. Other technology means any two-way, real-time communication technology that meets HIPAA requirements.

There is no estimated annual change to gross Medicaid expenditures as a result of the 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/. Individuals without Internet access may view the proposed State Plan Amendments at any local (county) social services district.

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PUBLIC NOTICE

Department of Health

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

The Department of Health proposes to amend the Title XIX (Medicaid) State Plan for non-institutional services to comply with enacted 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 home and community-based services (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 November 1, 2021, this notice proposes to enhance (increase) state established reimbursement rates as follows:

State established rates will be enhanced for state-plan approved private duty nursing (PDN) services for members 23 years of age and older by an additional 60 percent for the period November 1, 2021 through March 31, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of the proposed amendments for PDN services is $13,100,000.

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.

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

NON-INSTITUTIONAL SERVICES
State Plan Amendment #21-0067

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: For services delivered by non-State operated CSIDD providers, the source of funds for the State share is tax revenues appropriated to OPWDD. When these CSIDD providers bill eMedNY for payment, the Department of Health covers the non-federal share of expenditures in the first instance. Throughout the state fiscal year, such expenditures are applied against OPWDD appropriations through an accounting transaction in the Statewide Financial System, known as a Journal Voucher, that effectively reimburses DOH for the actual State share value of claims made by OPWDD provider agencies.

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: This SPA is for Rehabilitation Services and therefore not contingent upon a UPL demonstration.

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.