



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

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

March 31, 2022

RE: SPA #22-0019
Non-Institutional Services

Dear Mr. McMillion:

The State requests approval of the enclosed amendment #22-0019 to the Title XIX (Medicaid) State Plan for non-institutional services to be effective January 1, 2022 (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 December 29, 2021, and clarified on March 30, 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. STATE ____
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3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT XIX XXI
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TO: CENTER DIRECTOR
CENTERS FOR MEDICAID & CHIP SERVICES
DEPARTMENT OF HEALTH AND HUMAN SERVICES

4. PROPOSED EFFECTIVE DATE

5. FEDERAL STATUTE/REGULATION CITATION
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6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars)
a. FFY _____ \$ _____
b. FFY _____ \$ _____

7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT
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8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)

9. SUBJECT OF AMENDMENT

10. GOVERNOR'S REVIEW (Check One)	OTHER, AS SPECIFIED:
GOVERNOR'S OFFICE REPORTED NO COMMENT	
COMMENTS OF GOVERNOR'S OFFICE ENCLOSED	
NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL	

11. [REDACTED]
12. TYPED NAME
13. TITLE
14. DATE SUBMITTED March 31, 2022

15. RETURN TO

FOR CMS USE ONLY	
16. DATE RECEIVED	17. DATE APPROVED

PLAN APPROVED - ONE COPY ATTACHED	
18. EFFECTIVE DATE OF APPROVED MATERIAL	19. SIGNATURE OF APPROVING OFFICIAL
20. TYPED NAME OF APPROVING OFFICIAL	21. TITLE OF APPROVING OFFICIAL

22. REMARKS

Appendix I
2022 Title XIX State Plan
First Quarter Amendment
Amended SPA Pages

**New York
2(p)(ii)**

1905(a)(9) Clinic Services

Minimum Wage – Article 28 Freestanding Clinics

Effective January 1, 2017, and every January 1 thereafter until the minimum wage reaches [the state statutorily described per hour wage as shown below] \$15.00 per hour for all regions of the State, a minimum wage add-on will be developed and applied to the Ambulatory Patient Group (APG) rate for freestanding clinics and ambulatory surgery centers under Article 28.

Minimum Wage (MW) Region	12/31/2016	12/31/2017	12/31/2018	12/31/2019	12/31/2020	12/31/2021
New York City (Large employers)	\$11.00	\$13.00	\$15.00	\$15.00	\$15.00	\$15.00
New York City (Small employers)	\$10.50	\$12.00	\$13.50	\$15.00	\$15.00	\$15.00
Nassau, Suffolk, & Westchester counties	\$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00
Remainder of the State	\$9.70	\$10.40	\$11.10	\$11.80	\$12.50	[\$12.50] \$13.20

The minimum wage add-on and the adjusted APG rate will be posted to Health Commerce System (HCS: https://commerce.health.state.ny.us/public/hcs_login.html). The minimum wage add-on will be developed and implemented as follows;

- a. Minimum wage costs will mean the additional costs incurred beginning January 1, 2017, and thereafter, as a result of New York state statutory increases to minimum wage.
 - i. Minimum wage cost development based on survey data collected.
 1. Survey data will be collected for facility specific wage data.
 2. Facilities will report by specified wage bands, the total count of FTEs and total hours paid to employees earning less than the statutory minimum wage applicable for each MW Region.
 3. Facilities will report an average fringe benefit percentage for the employees directly affected by the minimum wage increase.
 4. The minimum wage costs are calculated by multiplying the total hours paid by the difference between the statutory minimum wage and the midpoint of each wage band where the facility has reported total hours paid. To this result, the facility's average fringe benefit percentage is applied and added to the costs.
 - ii. Minimum wage cost development based on the AHCF cost report data.
 1. The average hourly wages of employees in occupational titles where the reported average hourly wage is below the regional statutory minimum wage are identified.
 2. The total payroll hours of the titles identified are then multiplied by the regional statutory minimum wage resulting in a projected payroll. The actual payroll as reported in the AHCF cost report is then subtracted from the projected payroll resulting in the expected wage costs increase.
 3. The facility's fringe benefit costs directly affected by the wage increase are identified, and the average fringe benefit percentage is calculated.
 4. The fringe benefit percentage is applied to the increased wage costs and added resulting in the minimum wage costs.

TN **#22-0019**

Approval Date _____

Supersedes TN **#17-0012**

Effective Date **January 1, 2022**

Appendix II
2022 Title XIX State Plan
First Quarter Amendment
Summary

SUMMARY
SPA #22-0019

This State Plan Amendment proposes a continuation of minimum wage adjustments through current Medicaid reimbursement methodologies until all regions have reached an hourly wage of \$15.00 per hour consistent with enacted legislation.

Appendix III
2022 Title XIX State Plan
First Quarter Amendment
Authorizing Provisions

SPA 22-0019
Chapter 54 of the Laws of 2016

PART K

Section 1. Subdivision 1 of section 652 of the labor law, as amended by section 1 of part P of chapter 57 of the laws of 2013, is amended to read as follows:

1. Statutory. Every employer shall pay to each of its employees for each hour worked a wage of not less than:
\$4.25 on and after April 1, 1991,
\$5.15 on and after March 31, 2000,
\$6.00 on and after January 1, 2005,
\$6.75 on and after January 1, 2006,
\$7.15 on and after January 1, 2007,
\$8.00 on and after December 31, 2013,
\$8.75 on and after December 31, 2014,
\$9.00 on and after December 31, 2015, and until December 31, 2016, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors
or such other wage as may be established in accordance with the provisions of this article.

(a) New York City. (i) Large employers. Every employer of eleven or more employees shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

\$11.00 per hour on and after December 31, 2016,
\$13.00 per hour on and after December 31, 2017,
\$15.00 per hour on and after December 31, 2018, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(ii) Small employers. Every employer of ten or less employees shall pay to each of its employees for each hour worked in the city of New York a wage of not less than:

\$10.50 per hour on and after December 31, 2016,
\$12.00 per hour on and after December 31, 2017,
\$13.50 per hour on and after December 31, 2018,
\$15.00 per hour on and after December 31, 2019, or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(b) Remainder of downstate. Every employer shall pay to each of its employees for each hour worked in the counties of Nassau, Suffolk and Westchester a wage not less than:

\$10.00 per hour on and after December 31, 2016,
\$11.00 per hour on and after December 31, 2017,
\$12.00 per hour on and after December 31, 2018,
\$13.00 per hour on and after December 31, 2019,
\$14.00 per hour on and after December 31, 2020,
\$15.00 per hour on and after December 31, 2021,

S. 6406--C

46

A. 9006--C

or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(c) Remainder of state. Every employer shall pay to each of its

employees for each hour worked outside of the city of New York and the counties of Nassau, Suffolk, and Westchester, a wage of not less than: \$9.70 on and after December 31, 2016, \$10.40 on and after December 31, 2017, \$11.10 on and after December 31, 2018, \$11.80 on and after December 31, 2019, \$12.50 on and after December 31, 2020, and on each following December thirty-first, a wage published by the commissioner on or before October first, based on the then current minimum wage increased by a percentage determined by the director of the budget in consultation with the commissioner, with the result rounded to the nearest five cents, totaling no more than fifteen dollars, where the percentage increase shall be based on indices including, but not limited to, (i) the rate of inflation for the most recent twelve month period ending June of that year based on the consumer price index for all urban consumers on a national and seasonally unadjusted basis (CPI-U), or a successor index as calculated by the United States department of labor, (ii) the rate of state personal income growth for the prior calendar year, or a successor index, published by the bureau of economic analysis of the United States department of commerce, or (iii) wage growth; or, if greater, such other wage as may be established by federal law pursuant to 29 U.S.C. section 206 or its successors or such other wage as may be established in accordance with the provisions of this article.

(d) The rates and schedules established in paragraphs (a) and (b) of this subdivision shall not be deemed to be the minimum wage under this subdivision for purposes of the calculations specified in subdivisions one and two of section five hundred twenty-seven of this chapter.

**Appendix IV
2022 Title XIX State Plan
First Quarter Amendment
Public Notice**

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

Non-Institutional Services

Effective on or after January 1, 2022, the Department of Health will adjust the reimbursement rate for Ambulatory Services in Facilities Certified Under Article 16 of the Mental Health Law Clinic Day Treatment program to remove the providers that no longer offer the service and update the reimbursements for the remaining providers based on more current cost data.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2022 is \$300,000.

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 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 long term care services to comply with sections 2803, 2895-b, and 2828 of the Public Health Law. The following changes are proposed:

Long Term Care Services

Effective on or after January 1, 2022, the Department of Health will adjust rates for residential health care facilities meeting the requirements set forth in section 2828 of the Public Health Law and implementing regulations. This rate adjustment will support increases in resident-facing staffing services provided by registered nurses, licensed practical nurses, certified nurse aides, and nurse aides in accordance with standards set forth in section 2895-b of the Public Health Law and implementing regulations, which shall be sufficient to attain the highest practicable physical, mental, and psychological well-being of the residents of such residential health care facilities.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to the residential health care facility rate

adjustment is \$128 million as appropriated in the budget for state fiscal year 2021/2022.

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 institutional services to comply with enacted statutory provisions. The following changes are proposed:

Institutional Services

Effective on or after December 31, 2021, the Department of Health will adjust Residential Treatment Facility (RTF) rates for providers to consider increased labor costs resulting from increases in the New York State minimum wage in the Remainder of State region.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal year 2021/2022 is \$16,000.

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 Health

The Department of Health proposes to amend the Traumatic Brain Injury (TBI) (waiver number NY.0269.R04.04) and Nursing Home Transition and Diversion (NHTD) (waiver number NY.0444.R02.01) 1915c Waiver Programs in order to implement planned minimum wage-related rate increases pursuant to New York State Minimum Wage regulations effective January 1, 2017. This minimum wage bill stipulates that wages will be increased gradually through 2021. This increase specifically impacts all counties except for all New York City boroughs, Nassau, Suffolk, and Westchester.

Drafts of the proposed amendments to the TBI and NHTD waivers are available for review at: https://health.ny.gov/health_care/medicaid/redesign/mrt90/policy_docs.htm

As of December 31, 2016, the first in a series of wage increases went into effect in New York State. Rates differ based on region and industry to allow for a phase-in of new salaries. Changes take effect on the last day of the year. Annual increases for Upstate New York will continue until the rate reaches a \$15 minimum wage. The annual increases are published by the Commissioner of Labor by October 1. They are based on percentage increases determined by the Director of the Division of Budget, based on economic indices, including the Consumer Price Index. The rate for the “remainder of state” will be \$13.20 per hour effective December 31, 2021. This wage adjustment will require a rate increase of \$.90 per hour for waiver service: Home and Community Support Services (HCSS) for both the Nursing Home Transition and Diversion (NHTD) and Traumatic Brain Injury (TBI) 1915 (c) Medicaid Waivers. The anticipated change to projected gross Medicaid expenditures as a result of this proposed amendment is an increase of \$11.8 million for the remainder of the 5 year waiver cycles.

The public is invited to review and comment on this initiative. Comments may be filed electronically at: waivertransition@health.ny.gov, or mailed to: Department of Health, Office of Health Insurance Programs, Division of Long Term Care, Bureau of Community Integration and Alzheimer’s Disease, One Commerce Plaza, Suite 1605, Albany, NY 12210. All comments must be postmarked or emailed by 30 days of the date of this notice. Include “TBI and NHTD Waiver Amendments” in the subject line and indicate your name and affiliation. Individuals without internet access may contact the Waiver Unit at: (518) 474-5271 to receive additional information.

PUBLIC NOTICE

Department of State

F-2021-0654

Date of Issuance – December 29, 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 in-

formation 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-2021-0654 the applicant, Village Marine of Westhampton LTD, is proposing to install 552 linear feet of new low sill bulkhead; replace existing 4 feet wide x 464 linear feet fixed docks with floating docks; and dredge 949 cubic yards of sediment to -4’ MLW within existing West and East boat basins. This project is located at 33 Library Avenue, Village of Southampton, Suffolk County, Moneybogue Bay.

The applicant’s consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/12/f-2021-0654app.pdf> or at <https://dos.ny.gov/public-notices>

The proposed activity would be located within or has the potential to affect the following Special Management or Regulated Area(s):

- Moriches Bay Significant Coastal Fish and Wildlife Habitats:

https://dos.ny.gov/system/files/documents/2020/03/moriches_bay.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., 15 days from the date of publication of this notice or January 13, 2022.

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-2021-0695

Date of Issuance – December 29, 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-2021-0695, Vincent Rovitelli, is proposing to excavate/remove two land peninsulas from an existing marina basin. The peninsula measures 17’-4” wide by 185’-2” long and 10’-1” long by 214’-5” long. The peninsulas would be excavated down to an elevation of 243.5’ IGLD. The project would result in the excavation of up to 1,207 cubic yards of materials (765 from below the plane of Ordinary High Water). A boulder located within the marina basin would also be removed. Dewatering of material would be completed at an upland on-site location with off-site disposal at an approved upland location. Sheet pile would be placed at the landward extent of the each of the excavated peninsulas. In addition, 65 linear feet of sheet pile where the seawall is missing A turbidity curtain would be paced within the channel that separates the marina from Sandy Creek during excavation. The applicant was previously approved to replace existing fixed docks with floating docks throughout the marina basin. Various upland improvements to the site are also proposed.

The proposal is for the Sandy Creek Marina located off of Sandy Creek at Eight Lake Road East Fork in the Town of Hamlin, Monroe County.

The stated purpose of the proposed action is to “Improve the usage and safety of our existing marina.”

The applicant’s consistency certification and supporting information are available for review at: <https://dos.ny.gov/system/files/documents/2021/12/f-2021-0695publicnotice.pdf> or at <https://dos.ny.gov/public-notices>

Original copies of public information and data submitted by the ap-

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 all services to comply with enacted statutory provisions. The following changes are proposed:

Institutional Services

The following is a clarification to the December 29th, 2021 noticed proposal to adjust Residential Treatment Facility (RTF) rates for providers to consider increased labor costs resulting from increases in the New York State minimum wage in the Remainder of State region. With clarification below, this increase includes rates for providers of all services.

All Services

The Department of Health will adjust rates to take into account increased labor costs resulting from statutorily required increases in the New York State minimum wage. Under the statute, increases in the minimum wage will be phased in over a number of years until the minimum wage is \$15 per hour in the Remainder of State region, and Medicaid rates will be adjusted in those years to account for such increases.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for state fiscal years 2021/2022 and 2022/2023 is \$3,078,116 and \$12,312,459, respectively.

Providers:	SFY 2021-2022 (1/1/2022 - 3/31/ 2022)	SFY 2022-2023 (4/1/2022 - 3/31/ 2023)
Article 16 Freestanding Clinics	\$8,267	\$33,069
Article 28 Freestanding Clinics & Ambulatory Surgery Centers	\$3,475	\$13,900

Providers:	SFY 2021-2022 (1/1/2022 - 3/31/ 2022)	SFY 2022-2023 (4/1/2022 - 3/31/ 2023)
Assisted Living Programs	\$150,000	\$600,000
Certified Home Health Agencies	\$927	\$3,706
Article 28 Federally Qualified Health Centers (Freestanding Clinics)	\$437	\$1,748
Hospice	\$37,500	\$150,000
Hospital Inpatient	\$10,700	\$42,800
Intermediate Care Facilities	\$626,697	\$2,506,788
Nursing Homes	\$367,516	\$1,470,062
Personal Care	\$1,868,497	\$7,473,986
Residential Treatment Facilities	\$4,100	\$16,400
Totals:	\$3,078,116	\$12,312,459

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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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 institutional, non-institutional and long-term care services to comply with statutory provisions. The following changes are proposed:

All Services

Effective on or after April 1, 2022, the Department of Health will adjust rates statewide to reflect a 5.4% percent Cost of Living Adjustment for the following Office of Mental Health (OMH), Office of Addiction Services and Supports (OASAS), and Office for People With Developmental Disabilities (OPWDD) State Plan Services: OMH Outpatient Services, OMH Clinic Services, OMH Rehabilitative Services, Children Family Treatment Support Services, Health Home Plus, Residential Treatment Facilities for Children and Youth, OASAS outpatient addiction services, OASAS freestanding (non-hospital) inpatient rehabilitation services, OASAS freestanding inpatient detox services, OASAS addiction treatment centers, OASAS Part 820 residential services, OASAS residential rehabilitation services for youth, Intermediate Care Facility (ICF/IDD), Day Treatment, Article 16 Clinic services, Specialty Hospital, Health Home Services Provided by Care Coordination Organizations, Independent Practitioner Services for Individual with Developmental Disabilities (IPSIDD), and OPWDD Crisis Services.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to the April 1, 2022, 5.4% percent Cost of Living Adjustment contained in the budget for State Fiscal Year 2023 is \$109.9 million.

Effective on or after April 1, 2022, Health care and mental hygiene worker bonuses will be provided to New York's essential front line health care and mental hygiene workers. These bonuses are intended to attract talented people into the profession and retain people who have been working during the COVID-19 Pandemic by rewarding them financially for their service.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$1.85 billion.

Effective for dates of service on or after April 1, 2022, through March 31, 2024, all Medicaid rate-based claims will receive a 1% operating increase. Payments exempted from this increase, are as follows:

- Payments not subject to federal financial participation;
- Payments that would violate federal law including, but not limited to, hospital disproportionate share payments that would be in excess of federal statutory caps;
- Payments made by other state agencies including, but not limited to, those made pursuant to articles 16, 31 and 32 of the mental hygiene laws;
- Payments the state is obligated to make pursuant to court orders or judgments;
- Payments for which the non-federal share does not reflect any state funding; and
- At the discretion of the Commissioner of Health and the Director of the Budget, payments with regard to which it is determined that application of increases pursuant to this section would result, by operation of federal law, in a lower federal medical assistance percentage applicable to such payments.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$165 million.

Effective for dates of service on or after April 1, 2022, the 1.5% uniform reduction for all non-exempt Department of Health state funds Medicaid payments will be restored.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$280 million.

Non-Institutional Services

Effective on or after April 1, 2022, this proposal continues the supplemental upper payment limit payments made to general hospitals, other than major public general hospitals under non-institutional services of \$339 million annually.

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

For state fiscal year beginning April 1, 2022, through March 31, 2023, this proposal continues hospital outpatient payment adjustments that increase the operating cost components of rates of payment for hospital outpatient and emergency departments on and after April 1, 2011, for public general hospitals other than those operated by the State of New York or the State University of New York, which are located in a city with a population of over one million. The amount to be paid will be up to \$287 million annually based on criteria and methodology set by the Commissioner of Health, which the Commissioner may periodically set through a memorandum of understanding with the New York City Health and Hospitals Corporation. Such adjustments shall be paid by means of one or more estimated payments. Payments may be added to rates of payment or made as aggregate payments.

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

For state fiscal year beginning April 1, 2022, through March 31, 2023, this proposal continues payment of up to \$5.4 million in additional annual Medicaid payments to county operated free-standing clinics, not including facilities operated by the New York City Health and Hospitals Corporation, for services provided by such DTC and those provided by a county operated freestanding mental health or substance abuse DTC. Distributions shall be based on each eligible facility's proportionate share of the sum of all DTC and clinic visits for all eligible facilities receiving payments for the base year two years prior to the rate year. The proportionate share payments may be added to rates of payment or made as aggregate payments to eligible facilities.

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

Effective April 1, 2022, and each state fiscal year thereafter, this amendment proposes to revise the final payment component of the calculation to account for claim runout. The current authority to make supplemental payments for services provided by physicians, nurse practitioners and physician assistants will continue.

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

Effective on or after April 1, 2022, payments in quarter-hour units for the following harm reduction services for people who actively use drugs provided at New York State Commissioner of Health waived comprehensive harm reduction programs (community-based organizations) will be revised. The intention is to combat the opioid overdose crisis and reduce health care costs for people who use drugs. Harm reduction services improve population health and have been shown to reduce health care costs by preventing disease transmission (HIV, HBV, and HCV), injection site infections, emergency department and inpatient care from drug overdose, injury, and death. Comprehensive harm reduction programs are effective at engaging high-risk populations and serving as a bridge for entry into drug treatment and other health and social services.

Regional monthly rates will be established for New York City and the rest of the state and are based on the expected direct service costs in each region. Billable activities encompass those components of harm reduction attributable to direct client service, such as brief assessment and treatment planning, harm reduction counseling, linkage and navigation, medication management and treatment adherence counseling, psychoeducation support groups. Direct and indirect costs are budgeted as part of the rate. No funds shall be used to carry out the purchase or distribution of sterile needles or syringes for the hypodermic injection of any illegal drug.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$34.6 million.

Appendix V
2022 Title XIX State Plan
First Quarter Amendment
Responses to Standard Funding Questions

**NON-INSTITUTIONAL SERVICES
State Plan Amendment #22-0019**

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 budget appropriation received by the State agency that oversees medical assistance (Medicaid), which is the Department of Health. The source of the appropriation is the Local Assistance Account under the General Fund/Aid to Localities.

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

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

4. **For clinic or outpatient hospital services please provide a detailed description of the methodology used by the state to estimate the upper**

payment limit (UPL) for each class of providers (State owned or operated, non-state government owned or operated, and privately owned or operated). Please provide a current (i.e., applicable to the current rate year) UPL demonstration.

Response: Based on guidance from CMS, the State is working on submitting the current clinic 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.